



**PROBATE TRAINING:  
RESOLVING TITLE ISSUES TO KEEP  
CLIENTS IN THEIR HOMES**

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Housing and Community Development

# *About Philadelphia VIP*

*Mission Statement: Philadelphia VIP leverages the powerful resources of the community to provide quality volunteer legal services and ensure access to justice for low-income Philadelphians.*

Philadelphia VIP recruits, trains, and supports legal volunteers to represent low-income Philadelphians who face critical civil legal issues but cannot afford to hire a lawyer.

Since 1981, VIP has leveraged volunteers to secure pro bono representation for Philadelphians with legal problems that threaten their basic human needs: housing, income, family stability, and more. VIP's volunteers also assist microentrepreneurs and nonprofit organizations through its community economic development project.

VIP is the only organization that relies entirely on legal volunteers to expand access to justice to our Philadelphia neighbors—one in five of whom live in poverty, making Philly the country's poorest large city. Too often, a person's ability to resolve a legal matter depends not on the merits of their case, but on the depth of their pockets; VIP's legal volunteers help to close the resulting civil justice gap.

In addition to matching English-speaking clients with lawyers, VIP serves a multilingual population. These clients principally speak Spanish, but increasingly we see clients who speak Russian, Haitian Creole, Mandarin, Cantonese, Vietnamese and Cambodian, a reflection of growing and changing immigration patterns in the Greater Philadelphia area.

VIP handles any civil matter that is non-fee generating and for which there is no right to counsel. We focus our efforts on four legal priorities:

- Preserving Income;
- Preventing Homelessness;
- Supporting Family Stability; and
- Promoting Community Economic Development

The majority of VIP's cases are referred to us from our sister organizations, Community Legal Services and Philadelphia Legal Assistance; an additional number come from specialized legal services organizations throughout Philadelphia. Philadelphians seeking pro bono estate planning services, as well as small businesses and nonprofits, can apply directly to VIP for help.

In stark terms, VIP is the agency of last resort for many low-income individuals and families who face critical legal problems that affect their basic needs.

## *Frequently Asked Volunteer Questions*

### **Q: What happens after I accept a VIP case?**

A: After accepting a VIP case you will be sent a VIP referral form, all information included in the VIP file about the case and the VIP representation agreement. At this same time, your client will receive a letter with your name, address and phone number, and the request that they contact you within 7 days. You will receive a copy of this letter. At the first meeting you and the client should sign the VIP representation agreement. *The scope of representation should be filled in carefully, so that you and the client are clear about any limitations on your services.* (Contact VIP's Managing Attorney if you have any questions about the extent of your representation.) Keep the original in your file, give a copy to your client and send a copy to VIP.

### **Q: What if my client does not contact me?**

A: Your client may fail to follow through for several reasons. Your client may have difficulty reading or understanding the letter, may not speak English, may not have received the letter or may have other more pressing problems. If your client does not call you within a few days of your receipt of the VIP letter, try to call the client. If after 10 days your client has not contacted you, and you cannot reach them by telephone, write your client stating that if you do not hear from them within 5 days, VIP will close their file. After 5 days, if your client still has not contacted you, call or write VIP, describing your attempts to contact the client. Under most circumstances, VIP will close the case, and another client can be referred to you.

### **Q: What if my client doesn't have a telephone?**

A: Contacting a client who doesn't have a telephone can be challenging. We recommend that you send your client a letter asking the client to call you at a specific time on a specific date and time. If your client calls while you are on another line or away from your desk, ask your assistant to suggest a time for your client to call back. After your client reaches you, ask them for the telephone number of a neighbor, relative, and/or employer where you can leave a message if necessary. Another way that you can keep in touch with a client who doesn't have a telephone is to schedule weekly telephone "appointments". (For example, the client would call you every Friday at 1:00 p.m.) By keeping "appointments" you will have the opportunity to communicate information to the client.

### **Q: What if my client does not keep our appointments?**

A: Terminating representation of a client due to his/her/their failure to cooperate is left up to the discretion of the volunteer. Some clients are simply uncooperative, while other clients have personal problems or mental impairments that interfere with their ability to keep appointments. Address this problem with your client and make it clear that without his/her/their cooperation you will be unable to help him/her/they. If, after the discussion, the situation continues, you should contact VIP's Managing Attorney and discuss closing the case.

### **Q: What if my client doesn't speak English?**

A: If you are not fluent in the primary language of your client, VIP can arrange a volunteer to translate. Initially, we request that you first draw on your firm's resources. If your firm is unable to arrange an interpreter, please contact VIP and we will assist you. If the client speaks Spanish, VIP has Spanish-speaking staff members who have already translated many forms into Spanish. It is a good idea to ask your client for the telephone number of a friend, neighbor or relative of the client who can communicate with both of you. If you plan to relay confidential information through the client's interpreter, you should discuss this with your client.

Additional steps must be taken with the Court if your client does not speak English. If a hearing has been scheduled, you should contact the Court to inform the Court that your client will need an interpreter. In addition to the Court's interpreter who interprets the proceedings, you may want to have an interpreter with you at counsel table, so that you can communicate confidentially with your client during the proceedings. This interpreter is not provided by the Court. If you are submitting any documents that are

not in English, the documents must be translated and the translation must be certified. VIP can provide information on how to certify the translation.

**Q: What if I am fluent in a foreign language and would like to volunteer to interpret for other volunteers?**

A: VIP is always in need of volunteers with proficiency in foreign languages. We generally need interpreters who speak Spanish, Russian, French or Vietnamese. Whatever foreign languages you speak, however, please contact VIP because we may have a client who needs your help.

**Q: What if there are costs associated with my representation?**

A: VIP will cover certain costs only if approval is obtained from VIP before the cost is incurred. The costs encountered most often are:

- Photocopying medical records - You should first write the doctor and/or hospital and request that the fee be waived. If the doctor refuses, you should ask the client if he/she has the money to pay for the expense. If they do not, VIP may pay to obtain the records if VIP approves the cost before it is incurred.
- Filing fees - The client should qualify for In Forma Pauperis (IFP) status. An IFP petition must be filed with the Court. If the client's IFP petition is denied, the client must pay the filing fees unless VIP determines that the denial was unjustified. VIP has copies of IFP petitions and can explain to you the procedure for filing an IFP.
- VIP determines whether or not to cover litigation expenses on a case-by-case basis. If you would like VIP to cover a cost that is not listed above, please contact a VIP staff member to discuss.

**Q: Can I handle this case remotely?**

A: Yes! It is entirely possible to complete a probate case from your desk. Although the COVID-19 pandemic has shut down significant portions of our world, you are still able to assist a VIP client with probating the estate of a loved one and help them get title to their home. That is because the Register of Wills has a virtual probate process, the Tangled Title Fund permits for e-signatures and continues meets and disburses money for administrative costs, VIP has e-recording capabilities for recording deeds, and the Department of Revenue continues to accept inheritance tax returns and negotiate on abatement of interest and penalties.

**Q: What if I determine that my case lacks merit?**

A: You should not represent a client if you believe the case is not meritorious. Even if you do not represent your client, you provide a valuable service by explaining the situation to your client, advising your client of available options, and suggesting ways to avoid the problem in the future. If you are not sure of the merits of the case, contact a VIP staff member to discuss.

**Q: What do I do when my case is finished?**

A: You should write a letter to VIP stating the outcome of the case, providing the closing letter you sent to the client, estimating the number of hours you spent on the case, and indicating whether you are available to take another case.

**Thank You for Volunteering!**

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## RESOURCE LIBRARY

This training guide and the complete list of resources are available online at <https://www.phillyvip.org/resources/>

## THE IMPACT OF HOMEOWNERSHIP ISSUES ON CLIENTS AND THE GREATER PHILADELPHIA COMMUNITY

Homeownership cases are also known as “tangled title” cases. Our clients have embraced this term, because it describes a variety of legal issues that create a problem with ownership of real estate or a “cloud” on title. Many homeowners first find out during a crisis that they do not have legal title to their homes.

Individuals who have a “tangled title” problem have a legal interest in their homes but are not the record (or legal) owner. There are many scenarios in which an individual may have a tangled title problem. Many individuals are living in a home titled in the name of a deceased relative whose estate was never probated. Others may have entered into a lease/purchase agreement (also known as rent-to-own agreements or installment land contracts), where they have paid all or most of the purchase price for their home to the owner but the owner has since died, disappeared, or refused to convey title. Some individuals may also be the victim of a fraudulent deed transfer, whereby someone forged their name on a deed and purported to transfer title of their home out of their name.

VIP probate clients typically live or need to live in a home of which a deceased relative is still the record owner. In some cases, there may be multiple generations that separate the client and deceased record owner. Usually, the decedent’s estate has never been probated, and his or her assets have never been formally distributed.

VIP clients are referred from other agencies, including: Community Legal Services, Philadelphia Legal Assistance, and the SeniorLAW Center.

### The Impact on Clients

Tangled title problems have serious consequences for low-income Philadelphians. Without legal title to their home, our clients may not be able to:

- obtain a grant or loan to make urgently needed repairs;
- enter into or comply with a payment plan for delinquent water/sewer or real estate tax bills, in order to avert a Sheriff’s sale of their home;
- negotiate with a mortgage company as to a delinquent mortgage;
- obtain homeowners’ insurance; *or*
- transfer or encumber title in the future

As a result, if tangled title issues are left unresolved, clients are often left with the nearly impossible choice of living in unsafe conditions or becoming homeless. Unresolved tangled titles may also eventually lead to foreclosures and Sheriff’s sales, if delinquent bills relating to the property cannot be negotiated. Because of these consequences, tangled title problems may ultimately deprive individuals of the only asset that could prevent them and their future generations of sinking more deeply into poverty.

It is notable that many Philadelphians without title to their homes are elderly. At least 5% of the elderly interviewed at senior centers describe themselves as homeowners but also say that their names are not on the deed to their property. Additionally, one-third of all properties

in Philadelphia are owned by senior citizens. Thus, the impact of homeownership issues on the Philadelphia housing stock is significant due to its prevalence within the elderly population alone.

### The Impact on Homes and Neighborhoods in Philadelphia

The impact of tangled titles also extends far beyond the individuals whose homes are directly affected, reaching into the neighborhoods and the broader Philadelphia community in which these homes lie. When an individual with a tangled title problem is forced to leave a property due to her inability to repair it, the property is left abandoned and in significant disrepair. Vacant homes are prone to attracting criminal activity and also pose safety and fire dangers. Consequently, the City may board up or demolish such homes, which is done largely at taxpayers' expense due to the City's inability to collect the costs through the sale of a valueless property. Abandoned properties also decrease the value of other properties on the block by an average of \$7,000 and may prevent other homeowners who live within 50 feet from obtaining homeowners' insurance due to the heightened risks. Unresolved title problems also contribute to the occurrence of homelessness in the City, further straining very limited resources available to the approximately 2,500 Philadelphians who already sleep in shelters in the City every night.

### The Difference That Volunteer Attorneys Make

Solving homeownership issues and encouraging estate planning can preserve housing, stabilize neighborhoods, prevent homelessness, and strengthen the Philadelphia community's real estate tax base. Volunteer attorneys who assist clients in obtaining title to their homes greatly contribute to the Philadelphia community's ability to meet these goals. Volunteer attorneys also contribute by assisting clients in taking proactive, preventative steps to safeguard their ownership interests in their homes, such as by creating wills for their clients and helping clients to obtain title insurance. While homeownership issues among low-income clients can be difficult to prevent altogether, early intervention can help keep people in their homes and can decrease the prevalence and impact of homelessness and home vacancy on Philadelphia's citizenry and community.

## IMPORTANT PROBATE AND ESTATE ADMINISTRATION TERMS

The substance of this section was originally prepared by Howard M. Soloman, Esquire, of Law Offices of Howard Soloman, 1760 Market Street, Suite 600, Philadelphia, Pennsylvania, 19103.

<i>Administrator or Administratrix</i>	A person who is appointed by the Register of Wills or the Orphans' Court either when the decedent did not leave a will or when the person named in the will as Executor or Executrix cannot carry out his or her duties. The Administrator or Administratrix is responsible for settling the estate and carrying out the provisions of the decedent's will, if one exists.
<i>Agent</i>	A person designated in a Power of Attorney to manage the affairs or property, or both, of a person who is of age (called the principal). The agent's Power of Attorney is effective only while the principal is still living.
<i>Beneficiary</i>	A person named in a will, trust, life insurance policy, retirement plan, etc., to receive all or a portion of another's property.
<i>Bequest</i>	A gift of money or personal property made in a will.
<i>Codicil</i>	An amendment to a will.
<i>Decedent</i>	The person who has died.
<i>Devise</i>	A gift of real property made in a will.
<i>Estate (gross)</i>	Everything that the decedent owned or had an interest in at the time of his or her death, including life insurance, joint property, and certain transfers made during the decedent's lifetime.
<i>Executor or Executrix</i>	A person named in a will who is responsible for settling the estate and carrying out the provisions of the will.
<i>Guardian</i>	A person named to manage the personal affairs or property, or both, of a minor child or incapacitated person while the minor child or incapacitated person is living.

<i>Heir</i>	A person designated by a decedent's will or, if no will exists, by state intestate law as having a legal right to receive all or a portion of a decedent's property.
<i>Intestacy</i>	Distribution of property according to state law that comes into effect when a person dies without a will. (Note that "intestacy" does <i>not</i> result in the decedent's property automatically going to the Commonwealth if the decedent dies without a will.)
<i>Non-probate Property</i>	The decedent's property that is distributed after the decedent's death according to certain pre-determined terms, rather through the probate and estate administration process. Includes property that is owned by the decedent as a joint tenant with right of survivorship along with another person who survives the decedent, and life insurances policies held by the decedent that are payable to a specific individual or trust (and not to the decedent's estate).
<i>Personal Representative</i>	The modern and overarching label for a person serving as Executor, Executrix, Administrator, or Administratrix of a decedent's estate.
<i>Principal</i>	A person, who is of age, who executes a Power of Attorney giving another (called the agent) the power to manage his or her affairs or property, or both, during the person's lifetime.
<i>Probate Property</i>	The decedent's property that must go through the probate and estate administration process in order to be distributed to heirs. Includes property that is held solely in the decedent's name; property that is owned by the decedent as a tenant in common along with another person; and life insurance policies where the named beneficiary is the decedent's estate.
<i>Testator or Testatrix</i>	A person who has made a will.
<i>Trust</i>	A method of holding property where the person who creates the trust (called the settlor) vests in another person (called a trustee) the power to hold legal title to and manage property for the benefit of others (called the beneficiaries). A settlor can create a trust during his or her lifetime or in a will.

## HELPFUL RESOURCES AND CONTACT INFORMATION

The following are very informative resources that will be of help to you in handling a VIP homeownership case:

- [Philadelphia Estate Practitioner Handbook](#) -- This is an excellent reference guide that provides a thorough look at the substantive and procedural issues that come up in probate matters and Orphans' Court proceedings. It covers standard probate actions as well as more unique issues. Downloadable forms are available. Last updated in 2002. The Rules and Practice Committee of the Probate and Trust Law Section is presently revising the handbook.
- [Pennsylvania Consolidated Statutes, including Title 20, Probate, Estates, and Fiduciaries \(PEF\) Code](#) -- The Pennsylvania legislature now provides this free access to the Pennsylvania Consolidated Statutes.
- [Pennsylvania Supreme Court Orphan's Court Rules and Philadelphia County Orphans' Court Rules](#), -- These are the state and local rules that apply to actions filed in Orphans' Court in Philadelphia.
- [Dan Evans' Pennsylvania Estate and Trust Cybrary](#), -- This website, maintained by an experienced probate attorney in Philadelphia, provides articles and commentaries on estate planning and probate proceedings in Pennsylvania, as well as links to professional articles and resources. Last updated on 8/21/2014.

Also, below is a list of contact information for agencies that are frequently encountered in handling probate matters and § 3546 petitions.

Philadelphia Register of Wills	City Hall, Room 180 *open Monday through Friday, 8 am – 4 pm by appointment only	(215) 686-6255  <a href="#">Register of Wills Website</a>  Twitter @PHLROW
Philadelphia Court of Common Pleas, Orphans' Court Division, Clerk of Orphans' Court	City Hall, Room 415 Monday through Friday, 8 am – 4:30 pm	(215) 686-2230, -2231, -2232 <a href="mailto:ocsupport@courts.phila.gov">ocsupport@courts.phila.gov</a> – for e-filing support  <a href="#">Orphans' Court Website</a>
Pennsylvania Department of Revenue, Philadelphia Inheritance Tax Unit	110 North 8th Street, Suite 204A Philadelphia, PA, 19107	(215) 560-2056 <a href="mailto:RA-RV-BET-PHI-TA-EM@pa.gov">RA-RV-BET-PHI-TA-EM@pa.gov</a>

Most importantly, you can always contact VIP with any questions or concerns that you cannot otherwise resolve. We are always here to provide guidance or advice whenever we can. **However, we ask that our volunteer attorneys use our training materials as a primary resource.** Our most current training materials, including sample forms in both Word and PDF format, are available at <https://www.phillyvip.org/resources/>. Filter for “Probate” in the “Areas of Interest” for the probate-specific materials. Our website also contains recent

developments and updates that are relevant to all of our homeownership clients' cases.

Also, VIP sets up relationships between volunteer attorneys and mentors with extensive probate experience. **We strongly encourage our volunteers to make use of these mentors for consultation on substantive or procedural legal issues not otherwise addressed by the training materials or by any outside resources they reference.** Please do not hesitate to contact VIP for referral to a probate mentor.

The VIP staff can be reached at 1500 JFK Blvd, Suite 1850, Philadelphia, PA, 19102, (215) 523-9550, fax (215) 564-0845. The following are staff members at VIP whom you may also contact directly:

Kelly J. Gastley  
Managing Attorney  
(215) 523-9566  
[kgastley@phillyvip.org](mailto:kgastley@phillyvip.org)

P Michael Jones  
Staff Attorney  
(215) 523-9561  
[mjones@phillyvip.org](mailto:mjones@phillyvip.org)

Denise Lynch  
Supervising Attorney  
(215) 523-9563  
[dlynch@phillyvip.org](mailto:dlynch@phillyvip.org)

Lindsay H. Schoonmaker  
Supervising Attorney  
(215) 532-9555  
[lschoonmaker@phillyvip.org](mailto:lschoonmaker@phillyvip.org)

## STEP 1: COMPILING PERTINENT INFORMATION ON THE PROPERTY AND THE DECEDENT

Before you determine which approach to take regarding your client's homeownership case, it is vital that you first gather as much information as you can regarding the property and the decedent. To begin, you may find your client to be more open and communicative if you reassure him or her that all information that he or she relays to you is confidential.

It is particularly important to ask open-ended questions that probe the client for as much potentially useful information as possible, as clients sometimes tend to relay only that information that they view as relevant and/or favorable to their case. It is useful to stress to clients how important it is that you have as much information on the property and decedent as possible before you can proceed forward with their case. Clients often may have or be able to easily obtain the documents or information you need to proceed forward with their case, but they may not realize the importance of the documents or information until you ask about it from several different angles.

### I. Information Pertaining to the Property

#### A. BASIC PROPERTY INFORMATION

##### 1. Documents Held by the Client

First, you should collect from the client all documents that he or she has that pertain to the property and that are not already included in your case file, including, as applicable:

- mortgage notes and statements for any open mortgages on the property
- utility and tax bills, particularly if they are delinquent and/or may subject the property to foreclosure or a Sheriff's sale

##### 2. OPA Account Details

Second, if it is not already included in your case file, you should obtain the property's OPA Account Details from the Philadelphia Office of Property Assessment (OPA). The OPA Account Details provides basic information on the property including the last sale of the property, the assessed value, and any tax balances owed on the property. You can find this information by going to [property.phila.gov](http://property.phila.gov) and clicking on "Search the map."

##### 3. Deeds and Other Recorded Documents

You should receive a copy of the last deed recorded for the property with the VIP case file. Should you need copies of any other documents recorded at the Philadelphia Department of Records - including other deeds or mortgages - please ask a VIP staff member to send you the document. (See the section "Helpful Resources and Contact Information" for our contact information.) VIP can obtain these documents (often through "PhilaDox," the Department of Records' online index) at no charge.

## B. TITLE REPORT

Soon after you receive the referral for your VIP case, a VIP staff member will send you a title report for your client's property. It is essential to review the title report very carefully, in order to find out if there are any liens, judgments, or other issues with the property that need to be considered before determining how to resolve the case. (See Resource Library for more information on understanding title reports.)

### 1. What is a title report?

- a. A title reports is an analysis of the ownership, liens, judgments, and restrictions associated with a piece of real property.
- b. Title companies perform a title search to (1) confirm the ownership of the property, (2) identify any restrictions or allowances related to the property, and (3) report any liens secured against the real property.
- c. All information reported in a title search is of public record. Anyone can find this information if she knows how and where to look. Title companies are experts at performing such searches.

### 2. Contents of a title report

- a. Legal description of the property
- b. Details of the current ownership
- c. Current real estate taxes
- d. Liens secured against the real property
  - i. *In rem* judgments
    - a. Mortgages, home equity lines of credit, unpaid water bills, unpaid estate taxes, unpaid income taxes, and/or unpaid inheritance taxes.
  - ii. *In personam* judgments
    - a. Unpaid medical bills reduced to judgment, court judgments, tax liens, fines reduced to judgment and mechanics liens against the current and prior record owners, as well as your client.
    - b. For example, assume John Doe owns two pieces of real property. A judgment against John Doe for \$20,000 related to unpaid medical bills will show up on a title search for either property.

- c. If your client's name is John Doe, the report will include judgments against all John Does in the region in the municipality where the property lies.

### 3. What to look for when reviewing

- a. Does everything seem accurate?
- b. Any surprises, such as a deed you did not expect, typos, or recording errors?
- c. Watch for liens when your client has a common name or is a Jr/Sr/III. (See the John Doe example at D(2)(c).)
  - i. Title companies are overly inclusive in their title reports. When in doubt, the title company includes items as a protective measure.
  - ii. Just because a lien is listed on the title report does not necessarily mean it attaches to the property.
- d. How do the liens compare to the value?
  - i. Clients typically will want title to the property even if the liens are significant and near the value of the home. This is okay. (See IV below.)
    - a. Philadelphia has an affordable housing crisis. The average applicant can wait 7 -10 years for public housing. Taking title to an encumbered property is a more feasible than waiting for subsidized housing.
    - b. Low-income clients may be eligible for payment plans for water, real estate tax, and other liens.
    - c. Creditors are not likely to initiate a foreclosure action to collect a small lien. (See "E" below.)
- e. What is the probability that one of the lienholders will force a sale of the property to collect on the debt?
  - i. If the record owner has a \$1,000 judgment lien for an unpaid credit card, the collections agency is unlikely to foreclose. If a lien is for \$50,000, it's more likely the creditor is going to pursue foreclosure.
  - ii. Many lienholders wait until the property is sold to collect.

### 4. Most VIP clients receive title subject to existing liens.

- a. When the liens are, for example, real estate taxes related to the time the client

was living in the property, usually the client can accept this cloud on title and can understand that a payment plan may be available to her.

- b. If, instead, the client is involved in a lease-purchase agreement gone bad and the liens on the property are related to the prior owner's unpaid federal income tax, your client may want to walk away, or at least try to have the lien released as to his or her property.
- c. Philadelphia VIP and the Tangled Title Fund do not want to spend volunteer time, money, and resources on a case where the house is going to be lost because the client cannot afford it. If affordability is a concern, discuss it with it your client and consult with VIP staff as needed.
- d. Payment plans
  - i. Your client is likely able to enter a payment plans for water and real estate tax liens. Once in the plan and consistently making payments, the collector will not foreclose on the property to collect the lien.

#### 5. How to talk to your client about the title search

- 1. You should review the results of the title search with your client.
- 2. Ask your client if she is aware of various encumbrances on the real property.
- 3. Does your client still want to own the property even though it is encumbered? (Most clients do.)

**Once you have received the title report, you should carefully review it and discuss the results with your client.** Because the title report may reveal liens on the property that the client was not aware of, it is important that the client understand that if he or she obtains title to the property, it will be subject to those pre-existing liens. On occasion, VIP clients do decide not to proceed forward with obtaining title to the property due to extensive liens of which they were not aware. **As a result, it is vital that you advise and counsel the client as to this issue.**

If the results on the title report are unclear or appear in error, it is very useful to discuss it with the title insurance company that ran the report. **Should you need any further help in deciphering or otherwise analyzing the meaning of the items listed on the title report, please see the Resource Library for a guide on understanding title reports. You may also contact a VIP staff member for guidance at any time.** (See the section "Helpful Resources and Contact Information" for our contact information.)

#### C. DELINQUENT UTILITY CHARGES AND REAL ESTATE TAXES

Many VIP homeownership clients have delinquent utility charges and/or real estate taxes on their property. Often, the VIP case file will indicate whether there are delinquencies. Sometimes, clients will be aware of these delinquent bills when you first speak with them. In other cases, you and the client may only become aware of the delinquencies by analyzing the

title report. Regardless, it is important that your client understand that he/she/they will become responsible for paying down those delinquent balances once he/she has title. (See the section “Dealing with Utility Charges and Real Estate Taxes” for further information on how VIP clients can enter into low-income payment plans for delinquent utility charges and real estate taxes once they obtain legal title.)

1. If Your Client’s Property Has Delinquent Real Estate Taxes

*a. Communicating with the City, Linebarger, and GRB*

If your client’s property has delinquent real estate taxes and either has not entered into an Owner-Occupied Payment Agreement (OOPA) or has defaulted on an existing agreement, it is very important that you promptly reach out to a Philadelphia VIP staff member to discuss next steps. The City is now regularly initiating court actions to have properties with delinquent real estate taxes sold at Sheriff’s sale through the City Law Department. However, the City has agreed to delay any such court action against VIP clients who are in the process of obtaining legal title to their homes and who submit an Owner-Occupied Payment Agreement (OOPA) Application for the delinquent taxes. The OOPA is a payment plan for delinquent taxes available to low-income record owners and equitable owners. (VIP probate clients are equitable owners because they are heirs with a legal interest in the property.) See the section “Dealing with Utility Charges and Real Estate Taxes” for more information on the OOPA.

Generally, Philadelphia VIP has assessed whether the property has delinquent real estate taxes. VIP advises or assists the client in means of entering into an OOPA. If the client has received a notice of Sheriff’s Sale or has delinquent real estate taxes and has not entered into an agreement, you must reach out to Philadelphia VIP to discuss next steps. You may need to alert the City that you are assisting your client in obtaining legal title and to request that they continue to delay court action against your client’s property so that your client has time to submit an OOPA application. Once the OOPA is submitted to the City Law Department and approved, the court action will be informally stayed. See the section “Dealing with Utility Charges and Real Estate Taxes” for further explanation of the OOPA. (Ask a VIP staff member for a sample letter to send to the City. See also, the section “Dealing with Utility Charges and Real Estate Taxes” for a further explanation of the parties involved with collecting delinquent real estate taxes.)

*b. Handling a Case where Court Action has been Initiated by the Tax Collector*

If the tax collector initiated a court action *before* you received your case from VIP, VIP has already negotiated a postponement or an informal stay of the court action to give the client time to submit an OOPA application. You may need to confirm with the tax collector that the OOPA application was submitted and approved. It is essential that you review the section “Dealing with Utility Charges and Real Estate Taxes” for detailed instructions on contacting the tax collectors and submitting the OOPA application. (If the status of the court case is unclear, please contact VIP for assistance.)

If a court action is initiated *after* you receive the case from VIP, please contact VIP immediately for assistance.

c. *Registering a Notice of Interest with the City*

In addition to sending the above correspondence, it is also advisable to formally register a notice of your client's interest in the property with the City, pursuant to 53 PA. C.S. § 7193.1. This registering provides extra protection that you and your client will receive notice if the City does pursue collection of the delinquent real estate taxes in court.

The notice should be sent to the Philadelphia Department of Revenue and should include your client's name, residence, mailing address, and a description of the real property in which your client has an interest.

D. DETERMINING THE VALUE OF CLIENTS' HOMES

In some VIP probate cases, you may need to determine the value of your client's home, often in order to negotiate with other heirs. If a value is needed, you should see the Resource Library for information on determining the value of your client's home, including the issue of obtaining an appraisal.

## II. Information Pertaining to the Decedent

A. FAMILY INFORMATION

You should gather as much information on the decedent's family as possible, as both probate and Petitions will generally require notice to all potential heirs. Among others, family bibles and funeral programs are often good sources for this information.

You should gather the following information and sketch a family tree to ensure that all potential heirs have been accounted for:

- full name and aliases
- current or last known address
- age
- relationship to decedent - including biological, adoptive, step, and foster relationships
- any applicable dates of marriage, divorce, or death

B. INFORMATION ON THE DECEDENT'S ESTATE

1. Determining If an Estate Has Already Been Opened for the Decedent

It is very important to determine up front if an estate has already been opened for the decedent at the Register of Wills. If an estate has been opened, it may affect the method that you use to assist the client in obtaining title to the property (i.e., through the normal probate process, through pre-probate petitions, or through a § 3546 petition).

In order to determine if an estate has been opened, you should contact the Register of Wills, at (215) 686-6266, or in City Hall, Room 189. You should tell the Register of Wills that you are an attorney and give them the name (and date of death, if available) of the decedent.

If an estate has been opened for the decedent, obtain the estate number and request the estate file to be reviewed.

- If the estate was opened within the last 5 years, the estate file is stored at the Register of Wills' main office, in City Hall, Room 180. To obtain a copy of the estate file at no cost, you should contact a VIP staff member.
- If the estate was opened more than 5 years ago, the estate file is stored in the Philadelphia County Archives, at 3101 Market Street. Thus, the file must be ordered from the Register of Wills' main office, in City Hall, Room 180, and it takes up to 1 day for the estate file to be delivered to the Register of Wills' office. To obtain a copy of the archived estate file at no cost, you should contact a VIP staff member.

## 2. Gathering Other Information on the Decedent's Estate

### *a. Wills*

You should obtain a copy of the decedent's will, if one exists. Be sure to inquire whether the client has the original, as the Register of Wills requires a separate petition and brief informal hearing to probate a copy of a will when the original is no longer available. (See the [Philadelphia Estate Practitioner Handbook](#), Blue Book, Chapter 2, Part B, available at, for more information on probating a copy of a will.) When this is a necessary step, VIP has additional templates and resources available to assist with admitting the will. Please reach out to your VIP staff contact for additional assistance.

### *b. Intestacy Law*

If the decedent did not leave a will, you should analyze how the decedent's property should be distributed according to Pennsylvania intestacy laws. (See 20 PA. C.S. §§ 2101 - 2104.) Here is a summary of Pennsylvania intestacy law:

- *if there is a surviving spouse, then the estate passes as follows:*
  - *if there are also no surviving issue (children, grandchildren, etc.) and no surviving parents → spouse receives entire estate*
  - *if there are also surviving issue, all of whom are also issue of the surviving spouse → spouse receives the first \$30,000 of the estate plus ½ of the balance of the estate; issue share the remainder of the balance*
  - *if there are also surviving issue, at least one of whom is not the issue of the surviving spouse → spouse receives ½ of the estate; issue share other ½ of the estate*
  - *if there are also no surviving issue but at least one surviving parent → spouse receives the first \$30,000 of the estate and ½ of the balance of the estate; parent(s) share the remainder*
- *if there is no surviving spouse, then the estate passes in the following order:*

- *first* → any surviving issue (children, grandchildren, etc.) share
- *if there are no surviving issue* → then any surviving parents share
- *if there are no surviving issue or parents* → then any siblings (including half-siblings but not step-siblings) and the issue of siblings who predeceased the decedent share
- *if there are no surviving issue, parents, siblings, or siblings' issue* → then grandparents share (see 20 PA. C.S. §§ 2103(4), for the exact distribution)
- *if there are no surviving issue, parents, siblings, siblings' issue, or grandparents* → then uncles, aunts, and the children and grandchildren of deceased uncles and aunts share (see 20 PA. C.S. §§ 2103(5), for the exact distribution)
- *if there are no surviving relatives as outlined above* → then the estate “escheats” to the Commonwealth of Pennsylvania

**It is also very important to determine who shares in the estate if a child or sibling of the decedent dies before or after the decedent:**

- *If a child or sibling of the decedent predeceases the decedent, then the child's or sibling's issue (children, grandchildren, etc.), if any, take his share. If the child or sibling had no issue, then that child's or sibling's line “died out” before the decedent even died, and thus the other heirs simply share in the estate. Thus, in this case, you only need to know if the deceased child or sibling had any children, grandchildren, etc; the child's or sibling's surviving spouse and/or will does not come into play.*
- *If a child or sibling of the decedent dies after the decedent, then the child's or sibling's share is now considered part of their estate, since they technically inherited an interest when they survived the decedent. As a result, in this case, you need to know who the child's or sibling's heirs are – depending on whether they had a will or died intestate (and in the case of the latter, you need to know the child's or sibling's family tree).*

*c. Assets other than the Real Property*

You should also gather information on any other assets that may be in the decedent's estate. For many VIP clients, the only asset in the decedent's estate is the real property in question. However, there could be other assets in the estate, such as a small bank account or a vehicle. In such a case, you should work with the client to gather documentation on those assets, because they will need to be considered as you and the client determine by what method the client should obtain title to the property (i.e., through the normal probate process or through a § 3546 petition).

If the decedent's estate does have other assets, you should be aware that some of the assets may be transferable outside of the probate process. Following are some examples of such assets:

- a small balance in a bank account that is released (e.g., to the decedent's spouse

or child) in order to pay for funeral and burial expenses

- any unpaid wages paid to the decedent's spouse or child
- titles to vehicles that are transferred into the surviving spouse's name

If you need additional guidance on dealing with the decedent's assets (other than the real property in question), please contact a VIP staff member. (See the section "Helpful Resources and Contact Information" for our contact information.)

## C. THE DECEDENT'S DEATH CERTIFICATE

With most homeownership matters, you will likely need a copy of the decedent's death certificate. If the client does not have the decedent's death certificate, one needs to be obtained from the city or state.

In order to request a certified copy of a death certificate, the client must be a legal representative or a family member of the deceased person. The state considers an individual a "family member" if the individual is the spouse, parent, child, grandchild, or sibling of the deceased person, or if the individual is otherwise an extended family member with a direct relationship to the deceased person. Generally, VIP clients for whom you are initiating probate should meet this standard.

### 1. If the Decedent Died Before July 1915

If the decedent died before July 1915, a copy of his/he/their death certificate can be obtained from Department of Records, City Archives, 548 Spring Garden Street, Philadelphia, PA 19123. An application can be found [here](#). The cost is \$10.00 and the Tangled Title Fund will cover the cost. Please allow 2-4 weeks for delivery.

### 2. If the Decedent Died During or After July 1915

If the decedent died during or after July 1915, a copy of his/her/their death certificate can be obtained from the [Pennsylvania Department of Health, Division of Vital Records](#), via the internet, fax, mail, or in person.

With your assistance, the client will need to provide the state with the following information when making the request:

- the full name of the deceased person
- the deceased person's parents
- the deceased person's date of death
  - if the date of death is not known, the client can pay an extra \$34 to have the state search within a 10-year period to find the exact date of death – for example, if the client thinks the deceased person died sometime in the 1970s, he or she can ask the state to search from 1970-1979
- the city and county where the deceased person died
- the reason for the client's request
- the client's contact information

It is also helpful if the client can provide the state with any other helpful information about the deceased person that is known, such as his/her/their social security number, and the funeral director's name or company name. This additional information is particularly important if the client does not know the exact date of death.

*a. Contact the Funeral Home*

If the decedent had a funeral and died relatively recently, it is possible the funeral home retained several certified copies of the death certificate. If applicable try this option first. It should be the most expeditious and cost effective.

*b. Making a Request through the Mail*

With your assistance, the client should complete the appropriate form. (See [Pennsylvania Department of Vital Records](#) for the mail request form.)

With your assistance, the client should then mail the completed form and the following items to the Division of Vital Records, Attn: Death Unit, 101 South Mercer Street, Room 401, New Castle, PA, 16103:

- a good, clear copy of the client's valid, government-issued photo ID (for example, a driver's license), which must have the client's current address on it
- a self-addressed, stamped envelope
- payment - \$20 per certified copy, by check or money order only (payable to "Vital Records"); attach payment to completed form
- include a valid email address to receive an email acknowledgement that your application was received

The client should receive the certified copy of the death certificate in the mail in 12 to 14 weeks. If the client does not receive it after this time, you can contact the Division of Vital Records at (724) 656-3100.

*c. Making a Request in Person*

With your guidance, the client should go to the Division of Vital Records, 110 North 8th Street, Suite 108, Philadelphia, (215) 560-3054, to request a certified copy of the death certificate. Their office is open Monday through Friday, 8:00 am to 4:00 pm. (See [Department of Vital Records Public Offices](#) for more information on making a request in person.)

The client should take the following items with him or her:

- a good, clear copy of the client's valid, government-issued photo ID (for example, a driver's license), which must have the client's current address on it
- a self-addressed, stamped envelope

- payment - \$20 per certified copy, by check or money order only (payable to “Vital Records”)

If the decedent died during or after 1994, the client should receive the certified copy of the death certificate immediately. If the decedent died before 1994, the client should receive the certified copy of the death certificate in the mail in about 6 weeks. If the client does not receive it after this time, you can contact the Division of Vital Records at (724) 656-3100.

*d. Making a Request Online*

With your assistance, the client should complete the [appropriate form online](#)

- When submitting the form online, note that the client will have to submit payment by credit card. The cost is \$20 per certified copy PLUS a \$10 service fee. The credit card must be in the client’s name, *and* the mailing address for the credit card must be the client’s current address.

The client should receive the certified copy of the death certificate in the mail in 3-5 business days. If the client does not receive it after this time, you can contact the Division of Vital Records at (724) 656-3100.

3. If Uncertain as to Whether Someone Is Deceased or Unsure of Date of Death

If you are not sure if someone is deceased or are not sure of a decedent’s date of death, you can search the Social Security Death Index for free online at the following website:

- [Fold3.com](#)
- [FamilySearch](#)
- [Free People Search](#)
- [Philly.com: search obituaries](#)
- [PA Death Records from 1906 to 1969](#)

In searching these records, any information you have on the person, including last known residence, date of birth, and social security number, will be helpful.

Note that the Social Security Death Index is not a complete database of all of the deaths that have occurred in the United States. The index may not contain entries for an individual who did not pay into the social security system, whose death was not reported to the Social Security Administration, whose death occurred in the earlier half of the 20th Century, or whose death occurred very recently. However, it is an excellent free resource to use in particular when the date of death is unknown.

## STEP 2: PROVIDING NOTIFICATION OF THE DECEDENT'S DEATH TO THE DEPARTMENT OF HUMAN SERVICES

The Pennsylvania Department of Human Services (DHS)<sup>1</sup> provides free medical assistance (MA) to low-income individuals who are financially needy and/or who cannot pay for the cost of long-term care in the home or a nursing home. However, when a recipient of MA dies, the federal government mandates that DHS file a claim against his or her probate estate to recover the value of the MA provided for long-term care in the home or a nursing home only. DPW administers such claims through its Estate Recovery Program. For more information on DHS's Estate Recovery Program, you can visit the [DHS Estate Recovery Program website](#).

Under the Estate Recovery regulations, a personal representative or heir to an estate is only required to give notice to DHS requesting a statement of claim if the decedent received MA during the last 5 years of his or her life. However, DHS can, on its own initiative, make a claim against any decedent's estate where the decedent received MA after August 15, 1994.

**As a result, VIP volunteer attorneys should send a notice to DHS in all cases where the decedent died on or after August 15, 1994.** It is very important to send notice to DHS at the beginning of your client's homeownership case, before any major steps are taken to transfer title of the property into your client's name.

### I. Notifying DHS That an Estate May Be Subject to Recovery

All VIP volunteer attorneys should send a notice to DHS requesting a statement of claim at the beginning of your client's homeownership case. This notice should contain the following information about the decedent:

- name and last known address
  - social security number
  - date of birth and date of death
  - written documentation of the gross value of the decedent's estate
- *Note:* To determine the value of real property, use the Office of Property Assessment (OPA) valuation of the property. (See the section "Basic Property Information" for instructions on accessing OPA information.)

(Ask a VIP staff member for a sample notice letter.) You should send this notice either by certified mail, return receipt requested, or by fax to: Third Party Liability Section, Department of Human Services, Estate Recovery Program, P.O. Box 8486, Harrisburg, PA 17105-8486, Facsimile (717) 772-6553.

### II. DHS's Statement of Claim

Within 45 days of receiving the notice discussed above, DHS must send you a statement listing the amount of MA paid on behalf of the decedent, in order to assert a claim against the decedent's estate.

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<sup>1</sup> In 2013 the PA Department of Public Welfare was renamed the Department of Human Services.

- *If DHS does not respond within 45 days, any right it may have to place a lien on the decedent's estate property is deemed waived.*
- *If DHS responds with a statement of claim it holds against the decedent's estate, you will need to take further action, as described below.*

If DHS responds with a statement of claim, it is deemed to have a claim against the assets held in the decedent's probate estate, but it does *not* result in a lien on the property. It is also noteworthy that DHS claims apply *only* to probate property; thus, property that passes outside of the estate (e.g., via a right of survivorship) is not subject to a DHS claim.

- *Important Note about Outside Counsel:* DHS generally refers cases to outside counsel if their claim has been outstanding for a while and their attempted contacts with any known survivors have not yielded any response or results. If you are contacted by outside counsel regarding the notice you sent to DHS, VIP recommends that you still submit any hardship waiver requests directly to DHS, with a copy to the outside counsel.

Also, DHS claims do take priority over most other creditors' claims against the decedent's probate estate. (See 20 PA. C.S. § 3392)

- *Important Note About DHS's Calculation of Its Recovery:* DHS will subtract from their estate recovery amount the sum of all necessary and reasonable expenses incurred by your client in maintaining the home, including real estate taxes, utility bills, and home repairs and maintenance. As a result, if the deduction of these expenses makes the estate recovery amount particularly low, it provides an even more compelling reason for why DHS should not pursue its claim against the property, since doing so would leave your client without a place to live for a very nominal recovery amount.

## A. APPLYING FOR A HARDSHIP WAIVER

### 1. Formal Undue Hardship Waivers

DHS formally offers hardship waivers of any claims it holds against a decedent's estate if one of the two following conditions is met:

- if the gross value of the decedent's estate is \$2,400 or less; the estate has been administered; *and* there is an heir to the decedent's estate (see Resource Library for information on determining the value of your client's home), *or*
- if:
  - the client resided in the decedent's primary residence for at least 2 years before the decedent received nursing facility services or for at least 2 years while the decedent received home and community-based services;
  - the client provided care to the decedent for at least 2 years while the decedent

received home and community-based services or for at least 2 years before the decedent received nursing facility services; *and*

- o the client has no other alternative permanent residence

If your client is eligible for one of these waivers, you should send DHS the following:

- i. a completed Undue Hardship Waiver Request Form (see Resource Library), which, as the form states, *must include*:

- o documentation of the approximate fair market value of the property – The form asks for a copy of a certified appraisal, but most VIP clients cannot afford an appraisal. As a result, you should review the Resource Library for information on determining the approximate fair market value of your client’s home. You should include documentation of how you arrived at the approximate fair market value.
- o documentation of your client’s residency at the property – This includes a driver’s license, pay stubs, or a W-2 form.
- o *if the decedent resided in a long-term care facility, either:*
  - a statement from the treating physician or a that includes:
    - the decedent’s primary diagnosis, *and*
    - a statement that the decedent would have needed, at a minimum, intermediate care in a nursing facility if your client had not provided care to the decedent in his/her home for at least two years immediately prior to admission to the nursing facility,

**OR**

- A letter from a “person with knowledge” that can advise DHS that the applicant provided care for the recipient for at least two years immediately prior to admission the long-term care facility, *and* had the care not been provided, would have resulted in the long-term care sooner than the date admitted. A “person with knowledge” can be a family member, neighbor, or doctor, but not someone with an interest in the case, such as the attorney or the applicant.
- o *if the decedent received Medicaid-funded home- and community-based waiver services, either,*
  - a statement from the treating physician that includes:
    - the decedent’s primary diagnosis, *and*
    - a statement that the decedent would have needed, at a minimum, intermediate care in a nursing facility if your client had not provided care to the decedent in his/her home for at least two years while the decedent was receiving home- and community-based services,

**OR**

- A letter from a “person with knowledge that can advise DHS that the applicant provided care for the recipient for the recipient and that the recipient would have needed care at a nursing facility if the applicant had not provided care to the recipient in the home for at least two years while the recipient received home- and community-based services. A “person of knowledge” can be a family member, neighbor, or doctor, but not someone with an interest in the case, such as the attorney or the applicant.
- a completed and notarized No Alternative Permanent Residence Affidavit
- a. a letter with a full explanation of why your client qualifies for a hardship waiver based on one of the two conditions above.

You should mail the letter by certified mail, return receipt requested, to Estate Recovery Program, P.O. Box 8486, Harrisburg, PA 17105-8486.

## 2. Other Hardship Waiver Requests

**Even if your client does not meet either of the formal conditions listed above, he or she should still apply for a hardship waiver based on his or her individual circumstances that merit a waiver.** Specifically, you should send DHS the following:

- (1) a completed Undue Hardship Waiver Request Form (see Resource Library), which, as the form states, *must include*:
  - documentation of the approximate fair market value of the property – The form asks for a copy of a certified appraisal, but most VIP clients cannot afford an appraisal. As a result, you should review the Resource Library for information on determining the approximate fair market value of your client’s home. You should include documentation of how you arrived at the approximate fair market value. Note that if the OPA’s market value of the property is much lower than many of the comparable values of neighboring properties, it is best to use the OPA value in the request.
  - documentation of your client’s residency at the property – This includes a driver’s license, pay stubs, or a W-2 form.
  - *if the decedent resided in a long-term care facility and if your client provided care to the decedent in his/her home prior to admission to the nursing facility, a statement from the treating physician that includes:*
    - the decedent’s primary diagnosis, *and*
    - a statement that the decedent would have needed, at a minimum, intermediate care in a nursing facility if your client had not provided care to the decedent in his/her home prior to admission to the nursing facility
  - *if the decedent received Medicaid-funded home- and community-based waiver*

*services and if your client provided care to the decedent in /his/her home while the decedent received these services, a statement from the treating physician that includes:*

- the decedent's primary diagnosis, *and*
  - a statement that the decedent would have needed, at a minimum, intermediate care in a nursing facility if your client had not provided care to the decedent in his/her home while the decedent was receiving home- and community-based services
- a completed and notarized No Alternative Permanent Residence Affidavit
- (2) a letter that provides compelling reasons for why DHS should not recover against the value of the property and why DHS asserting its claim against the property would cause a hardship to your client, including the following compelling reasons as they apply to your client's situation:
- why your client was unable to care for the deceased before he or she died
  - that your client did care for the decedent at some point during his or her life, just not in the 2 years immediately before his or her death;
  - that your client has a minor child who lives with him or her;
  - that your client has a minor child with a disability;
  - that your client has a disability;
  - that your client has no other place to live and will become homeless if DHS asserts its claim against the property; *and/or*
  - that the property has a negligible or non-existent net value, taking into account the fair market value of the property and the liens on the property (including documentation; see Resource Library for information on determining the value of your client's home)

**If you are submitting this type of hardship waiver request, please contact VIP for a sample letter.**

You should mail the letter by certified mail, return receipt requested, to Estate Recovery Program, P.O. Box 8486, Harrisburg, PA 17105-8486. If your request for a hardship waiver is denied, you can appeal to Bureau of Hearings and Appeals, Department of Human Services, P.O. Box 2675, Harrisburg, PA 17105.

**B. WHAT TO DO WHEN A REQUEST FOR A HARDSHIP WAIVER HAS BEEN DENIED**

**If DHS denies your clients request for a hardship waiver, you should discuss with VIP and with your client whether the client should still obtain title to the property.**

DHS does allow for the postponement of recovery against a decedent's estate under the following circumstances:

- If the client is the decedent's spouse, *and* if the decedent received nursing facility care or home and community-based services for long-term care, DHS will postpone recovery against the client's acquired property (even if the client is not living in the property) until the client either (1) goes into a nursing facility, (2) vacates or sells the property, or (3) dies.
- If the client is a dependent child of the decedent *and* is under the age of 21, DHS will postpone recovery against the client's acquired property until the client reaches the age of 21.
- If the client is an adult child of the decedent and is blind or totally and permanently disabled, DHS will postpone recovery against the client's acquired property until the client dies.
- If the client and the decedent each owned a portion of the property as tenants in common, *and* the client continues to live in the house after the decedent's death, DHS will postpone recovery until the client dies.

However, mere postponement of estate recovery means that your client cannot obtain clear title to the property; instead, the client can, in effect, only receive the equivalent of a life estate to the property. As a result, it largely depends on the client's individual circumstances as to whether mere postponement of recovery is a desirable option worth pursuing. Again, you should discuss this option with VIP and with your client before moving forward.

### **STEP 3: DETERMINING WHETHER THE CLIENT'S HOMEOWNERSHIP PROBLEM SHOULD BE RESOLVED**

Once you gather the initial documentation on the property and the decedent and assess whether the property is subject to recovery by DHS, it is important to next consider whether it is to the client's advantage to resolve his or her homeownership problem. VIP makes a diligent effort not to refer any homeownership case where it is better for the client not to obtain title to the property. However, there are often facts and circumstances that may lead to this conclusion that are not fully developed until the volunteer attorney begins researching the client's case.

#### **I. Assessing the Advantages and Disadvantages**

The advantages to the client of resolving the homeownership problem may include:

- being able to stay in his or her home
- being eligible for home repair grant programs
- being able to negotiate with a mortgage company, utility company, or other lienholder to establish a payment plan to pay delinquent charges
- qualifying for a loan
- obtaining insurance on the home and the personal property within it
- being able to sell the house, transfer title, or leave the property to a friend or relative in a will

However, there may be disadvantages for the client in resolving his or her homeownership problem. For example, by obtaining legal title to the home, the client may:

- become responsible for a large amount of liens, as outlined in the title report, which he/she may be financially unable to handle or simply uncomfortable with assuming (see also, in part, the section "Determining Whether the Client's Homeownership Problem Should Be Resolved", for a discussion on open mortgages on the property)
- risk losing the house to state assistance programs (like Medicaid and Medical Assistance) that provided the deceased record owner with services or benefit and thus have a claim on the assets of the deceased's estate
- subject the property to the claims of the client's creditors

**Because every homeownership case is unique, it is vital that VIP and its volunteer attorneys carefully assess each client's case by considering the advantages and disadvantages to the client of resolving his or her homeownership problem *before* any major steps are taken to resolve the homeownership problem.** In making this assessment, it is also important that the attorney discuss these matters with the client and fully involve the client in the process of deciding how, and whether, the title problem should be resolved.

## II. Dealing with Objecting Heirs

Once you have gathered the preliminary information on your VIP homeownership client's case, you may determine that one or more heirs to the property do not agree to give their interest(s) in the property to your client, at least initially.

When heir(s) indicate that they are not willing to sign their interest(s) in the property over to your client, the next step is try to persuade the heir(s) to do so by doing all or some of the following:

- *Finding out why the heir(s) are not willing to give up their interest(s)* – You should discuss with your client whether your client thinks the heir(s) would respond more favorably to discussing this matter directly with your client, directly with you, or with both you and your client present. You and/or your client then need to discuss with the heir(s) why they are not willing to give up their interest, to determine if there is a way to negotiate so that both parties can achieve what they want.
- *Putting together an estimate of the true net value of the property, to present to the heir(s)* – You will need to start by coming up with an estimated value of the property. (See Resource Library for information on determining the value of your client's home.) Then you should deduct from that value all of the liens on the property, which are listed in the title report. This will give you a net value of how much the heirs as a whole would actually walk away with if the property were sold and the proceeds distributed. Often, this amount is low and becomes even lower when the heir's proportional interest (e.g., ¼) is calculated.
- *Contact the heir(s) to try to persuade them to give their interest(s) to your client* – Either you or your client can do this, depending on the situation and your client's capabilities. In addition to relaying the true net value of the property, you should also relay other facts that work in your client's favor. For instance, if the client has spent a certain amount of money repairing the property and/or paying off delinquent bills, that should be mentioned. You should also remind the heir(s) that if they were to have their name(s) on the deed, they would be responsible for their share of the current and delinquent real estate taxes.
- *As a last resort, offer a buy-out, if possible* – If the above steps still do not work to convince the heir(s) to give up their interest(s), a last option is for your client to offer to buy out the heir(s)' interest(s) in the property if the client has sufficient income or other leverage to do so. This is often difficult for VIP clients, who may not have the income to pay for a settlement or possibly obtain a mortgage to buy out the heir(s). However, it is a possibility that should be looked into as a last resort, if necessary.

### III. An Important Note about Open Mortgages on the Property

If your initial fact and document gathering (as described above in Step 1) reveals that there is an open mortgage on the property (i.e., a mortgage that has not been satisfied or released of record) that is still in the decedent's name, **it is vital that the mortgage situation be addressed before any steps are taken to actually transfer title of the property into the client's name.** This is because most mortgages contain a "due on sale" clause that states that the mortgage must immediately be paid in full if the mortgagor transfers title of the property to someone else.

You should begin by discussing the mortgage with your client, including:

- the amount of the regular monthly mortgage payment
- the current mortgagee (the company holding the mortgage)
- the last time that a regular monthly mortgage payment was made
- if the mortgage payments are behind at all, (1) to what extent/by how much, and (2) what communications the client has had with the mortgage company concerning the delinquency

You and your client will then have to address the client's options in regards to the mortgage. Some mortgage companies allow close family members to "assume" a deceased mortgagor's mortgage, meaning that the mortgage will be transferred into the family member's name under the same terms that the deceased mortgagor had and without the family member having to qualify independently. In other circumstances, however, the client may have to qualify for his or her own financing, which can be difficult for VIP clients with particularly low incomes.

**Regardless of whether a client may be able to assume a mortgage or must qualify for his or her own financing, it is important that you and a housing counselor assess whether your client has the financial capability to maintain consistent mortgage payments.** To make this assessment, your client should meet with a housing counselor immediately to go through a budget, obtain a credit score, and analyze the client's financial ability to handle a mortgage. **Please contact a VIP staff member for contact information for a housing counseling agency near your client.** (See the section "Helpful Resources and Contact Information" for our contact information.)

As you and your client address this mortgage issue, you should discuss any questions or concerns you have with VIP.

## STEP 4: APPLYING TO THE TANGLED TITLE FUND

### I. About the Tangled Title Fund

The Tangled Title Fund (“The Fund”) is a grant program largely funded by the City of Philadelphia’s Division of Housing and Community Development (DHCD) to help prevent homelessness and urban blight. It is administered by Philadelphia VIP. The monies in the Fund are used to pay for administrative, legal, and other costs that arise when low-income persons are seeking to clear title to their homes. Clients are eligible to receive up to \$4,000 in funds.

### II. Client Eligibility for Receipt of Tangled Title Funds

In order to be eligible to receive Tangled Title funds, the client must meet the following requirements:

- The client must be “income eligible,” meaning that his or her household income cannot exceed 200% of Federal Poverty Guidelines. VIP screens all clients to ensure that they are income eligible.
  - Client’s whose household income is over 200% may be eligible for funds. The determination is made on a case-by-case basis.
- The client’s house must be structurally sound. It is not problematic if the property merely has repair issues; indeed, our clients often are seeking title on order to become eligible for a city repair grant. However, if the house is dangerous due to structural unsoundness or uninhabitable conditions, the client may not be eligible for Tangled Title funds.
- The extent of encumbrances on the property must not be too great. Liens held by the City for delinquent real estate taxes or liens for delinquent water and sewer charges are not necessarily problematic, because the relevant agencies are often willing to work with our clients to establish payment plans. However, third-party liens (particularly those sold by the City for delinquent taxes) that cannot be resolved may make a client ineligible for Tangled Title funds.
- The client’s case must have decent prospects of resolution, from a practical legal perspective.

Generally speaking, any VIP homeownership client should be eligible for Tangled Title funds. However, if you have a concern that your client may not be eligible, you should contact the administrator of the Tangled Title Fund (as listed on the Tangled Title Fund application materials, available at on the [Tangled Title Fund Website](#)).

### III. The Application Process

Because both the approval process and actual disbursement of funds can take several weeks, **we strongly recommend that you submit a Tangled Title Fund application during the early stages of your client's homeownership cases.** The process works most smoothly and efficiently for you and the client when the client's application is approved before funds are actually needed, so that any questions or concerns that the Committee has regarding the initial application can be addressed up front and then disbursements can be made as promptly as possible thereafter.

#### A. SUBMITTING A COMPLETE APPLICATION

Please see the [Tangled Title Fund website](#) for the most current application materials.

#### B. COSTS THAT THE TANGLED TITLE FUND COVERS

Most costs can be covered by the Fund. Following is a list of the most common costs incurred by clients and paid for by the Fund:

- probate filing fees (but not filing fees that can be waived by the filing and granting of an *In Forma Pauperis* (IFP) Attorney Certification)
- advertising, if necessary
- inheritance tax (and interest and penalties, if your request for waiver is denied)
- real estate transfer tax
- title insurance, where the client is obtaining the property from a third party (and not through a will or intestate succession)
- delinquent real estate taxes and water/sewer charges (either principal amount owed, if not too high, or down payment needed to establish a payment plan)
- other miscellaneous costs (but not recording fees)

**Please note that neither VIP nor the Tangled Title Fund can provide funds for the client to pay consideration to the opposing party.** While the Tangled Title Fund can pay for costs associated with the transfer of title, such as title insurance and transfer taxes, it cannot make any payments for consideration. As a result, if you are discussing a monetary settlement with an opposing party, it is vital that you discuss with the client, and with VIP as necessary, if and how the client may be able to make a settlement payment to the opposing party. Please contact VIP to discuss potential options that your client may have if a monetary settlement becomes possible. (See the section "Helpful Resources and Contact Information" for our contact information.)

If you are unsure whether a certain cost may be covered by the Tangled Title Fund, it is imperative that you discuss it with VIP *before* the cost is or must be incurred, or the Fund may not be able to pay or reimburse for that cost.

#### C. THE APPROVAL PROCESS

Once an application has been submitted, the Tangled Title Fund Advisory Committee reviews the case. In reviewing the case, the Committee will often provide guidance on strategies you can take to reduce costs or even avoid certain costs completely.

If the application is approved, the client becomes eligible to receive up to \$4,000 (up to \$5,000 with prior committee approval for excessive transfer taxes and inheritance taxes. in Tangled Title funds in the resolution of his or her case, based on the case description and budget submitted with the application.

#### IV. The Disbursement Process

Please see the [Tangled Title Fund website](#) for the most current information on requesting disbursements, the availability of funds, and our policy on firm donations and reimbursement.

## STEP 5: CHOOSING AN APPROACH TO TRANSFERRING TITLE - PROBATE VERSUS § 3546 PETITION

Many of our homeownership cases involve one or more successive estates that have never been raised and administered, often with the most recent death occurring several years ago. Sometimes, the deceased person(s) left a will, but this is often not the case.

In these homeownership cases, there are typically two options that can be pursued in order to transfer title of property to the client: (1) probate and estate administration, or (2) filing a § 3546 Petition for Determination of Title in Orphans' Court. While this training guide as a whole explains each of these options in much greater detail, the following table briefly summarizes when each avenue is most appropriate.

	Probate	§ 3546 Petition
<b>When Should This Option Be Used?</b>	<p>When:</p> <p>(1) both:</p> <p style="padding-left: 20px;">(a) all of the decedent's heirs can be located, <i>and</i></p> <p style="padding-left: 20px;">(b) all of the decedent's heirs agree that the client should receive the property</p> <p style="text-align: center;"><i>or</i></p> <p>(2) the client is the only heir to the property, by will or by intestacy law</p>	<p>When:</p> <p>(1) either:</p> <p style="padding-left: 20px;">(a) the decedent died more than 1 year ago, and no letters have been granted on the decedent's estate, <i>or</i></p> <p style="padding-left: 20px;">(b) a personal representative other than the client has been appointed for the decedent's estate, but the personal representative has not filed an account within 6 years of the decedent's death</p> <p style="text-align: center;"><i>and</i></p> <p>(2) either:</p> <p style="padding-left: 20px;">(a) there are missing heirs, <i>or</i></p> <p style="padding-left: 20px;">(b) there is at least 1 heir who refuses to cooperate in signing his/her interest over to the client but who will not actually object to the client obtaining title to the property via a § 3546 action in court, <i>or</i></p> <p style="padding-left: 20px;">(c) there are many heirs who appear to agree to give their interests in the property to the client, but it is likely that some of those heirs will not actually be cooperative in signing their interest in the property over to the client</p>
<b>Monetary</b>	(1) \$320 - base probate filing fee	(1) publication, depending on the Court's

<p><b>Costs Involved</b></p>	<p>for estates ranging in value from \$10,000 to \$50,000; could be slightly more or less, depending on the City's valuation of the property</p> <p>(2) average of \$340 total - advertising of estate notice, <i>if the attorney and client choose to advertise</i>, once a week for 3 weeks, in both a legal paper and a paper of general circulation</p> <p>(3) inheritance tax</p> <p>(4) transfer tax <i>only if</i> there are any heirs giving their interest in the property to client who do not qualify for an exempt transfer</p>	<p>Decree:</p> <p>(a) <i>minimum</i>, average of \$505 - once in both a legal paper and a paper of general circulation</p> <p>(b) <i>maximum</i>, average of \$1,515 - once a week for 3 weeks, in both a legal paper and a paper of general circulation</p> <p>(2) inheritance tax</p> <p>(3) transfer tax <i>only if</i> there are any heirs giving their interest in the property to client who do not qualify for an exempt transfer</p>
<p><b>Potential Length of Proceeding</b></p>	<p>(1) It takes at least <b>10 business days</b> in order for the Register of Wills to grant a Petition for Letters.</p> <p>(2) Once Letters are issued, the personal representative and all of the heirs can <b>immediately</b> deed the property to the client, as long as the client understands that he/she is taking title subject to any debts that the decedent may have had (at least until the 1-year statute of limitations expires, if the attorney and client decide to advertise notice of the estate's administration),</p> <p>(3) The rest of the estate administration process can take anywhere from several months to a year or more, depending on other assets in the estate.</p>	<p>(1) The Petition must be drafted, and appropriate documentation/exhibits must be compiled.</p> <p>(2) Once the Petition is filed, the Court must review it, which can take <b>several weeks</b>.</p> <p>(3) Assuming that the Court issues a Decree <i>Nisi</i>, notice must then be given by mail and publication.</p> <p>(4) Next, a <b>3-month waiting period</b> begins once notice by mail and publication occurs.</p> <p>(5) Once the 3-month waiting period has passed without any heirs or creditors objecting, the Court's Decree becomes final. The Decree and a Deed of Confirmation can then be recorded, thereby transferring title to the client.</p>
<p><b>Advantages of This Option</b></p>	<p>(1) <i>Speed</i> - As soon as Letters are issued to the personal representative, the heirs can sign a deed transferring title of the property to the client, again as long as the client understands that he/she is taking title subject to any</p>	<p>(1) <i>Necessary if there are missing, uncooperative, and/or deceased heirs</i> - If any heirs are missing, uncooperative, and/or deceased, you have to use the § 3546 petition to get the client title, because not all of the heirs will be willing or able to sign a deed transferring their interests in the property to the client.</p>

	<p>debts that the decedent may have had.</p> <p><i>(2) Can potentially clear some of the decedent's debts</i> - If the attorney and client decide to advertise notice of the estate's administration, the 1-year statute of limitations for creditors to make any claims they have against the decedent's property begins to run.</p>	<p><i>(2) Avoiding probate</i> - The filing of a § 3546 Petition may be advantageous if there are estate assets other than the property in question and to which the client is not entitled, so that the client does not have to become the personal representative of the estate and deal with other heirs, assets, and debts.</p> <p><i>(3) Clears some of the decedent's debts</i> - Once the Decree is final, the property is free and clear of any debts of the decedent that have not been reduced to a lien or judgment.</p>
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### Choosing an Approach

While the above summaries do not constitute a complete analysis of which approach - probate or a § 3546 Petition - is best in any given case, they do serve as a good starting point as you begin to consider how to handle your client's homeownership case. **In choosing an approach to your client's case, you should carefully consider the analysis above,** and as always, we encourage you to discuss any questions, doubts, or concerns you have regarding your homeownership case with a mentor who has experience in handling homeownership cases, including VIP staff members. This training guide focuses on the probate process. However, VIP has additional training materials available focused on the § 3546 Petition process.

## STEP 5: PROBATE AND ESTATE ADMINISTRATION

The substance of this section was originally prepared by Howard M. Soloman, Esquire,  
of the Law Offices of Howard M. Soloman.

### I. Defining Probate

Probate is a process used to clear title to probate property passing from a decedent to his or her heirs. Probate is necessary only if the decedent died owning probate property. (Probate property is defined in the section “Important Probate and Estate Administration Terms”.)

- *Note:* If the decedent died owning only nonprobate assets, the administration of the estate can be done informally by re-registering jointly held assets, collecting insurance proceeds, and so on. Such administration generally can be done merely with a death certificate.

The Register of Wills has jurisdiction over most aspects of the probate process (under 20 PA. C.S. § 901). The Orphans’ Court Division of the Philadelphia Court of Common Pleas has exclusive jurisdiction over any appeals or proceedings resulting from decisions of the Register of Wills, but has little original jurisdiction over probate (under 20 PA. C.S. § 711).

- *Note:* In some VIP cases, Letters of Administration or Letters Testamentary were previously issued to someone other than the client. In these cases, the Personal Representative may have failed to act (e.g., not transferred title of the real property to client), may have acted inappropriately (e.g., transferred title of the real property to someone who did not have an interest in it), or never actually had the standing to receive Letters in the first place.

In such instances, it is important to note where original jurisdiction lies. The Register of Wills has original jurisdiction over revoking Letters issued if (1) Letters were issued based on an earlier will, and a later will then surfaces naming someone else as the personal representative of the estate, or (2) if the person previously appointed Personal Representative was not actually entitled to receive Letters (e.g., she claimed to be the daughter of the decedent, but in fact was the decedent’s niece). Alternatively, the Orphans’ Court has original jurisdiction over removing a Personal Representative due to cause (e.g., he transferred the decedent’s property to himself without obtaining the agreement of the other heirs).

### II. Personal Representatives

#### A. DETERMINING WHO THE PERSONAL REPRESENTATIVE OF THE ESTATE WILL BE

If the decedent left a will naming a personal representative to administer his or her estate, probate is usually initiated by that person.

If the decedent did not leave a will, or did not name a personal representative in his or her will who survives the decedent, probate can also be initiated, for example, by a family

member who is not named in the will or by a creditor who believes that there is money available to pay debts. (See 20 PA. C.S. § 3155) Generally, the Register of Wills will grant letters to persons in the following order:

- o persons named in the will as residuary beneficiaries
- o the surviving spouse
- o other intestate heirs
  - Note: Other than the surviving spouse who has a superior right, intestate heirs each have an equal right to serve as personal representative. As a result, if your client is just one of several intestate heirs, the other heirs will need to sign a Renunciation form renouncing their right to serve as personal representative in favor of your client. (See Resource Library for a sample renunciation form.)
- o principal creditors of the decedent at the time of death
- o other fit persons
- o if any of the above decline their right, then a nominee of the above
- o an agency serving as guardian of an incapacitated heir who dies during the guardianship

It is possible that more than one person may be entitled to act as the personal representative of the estate. This may occur if the decedent named multiple people as personal representatives in his or her will or if the decedent died intestate and left more than one heir who is authorized to initiate probate under 20 PA. C.S. § 3155. In such a case, it may be necessary for some parties to renounce their right to serve as the personal representative. (See Resource Library for a sample renunciation form. Note that this form is not the same as an heir's release of his or her right to receive estate property. In order for an heir to release his or her right to receive estate property, he or she must sign a disclaimer of his or her legal property interests.)

- *Note:* Regardless of whether a designated personal representative or another person initiates probate, anyone with an interest in the estate can challenge the way the estate is being administered.

## B. A WARNING FOR POTENTIAL PERSONAL REPRESENTATIVES

It is important that the client understand that, as the personal representative of a decedent's estate, the client can be held personally liable if costs such as taxes and debts are not paid before estate assets are distributed. However, the consequences of assuming liability greatly decrease when:

- (1) the only asset being distributed from the estate is real property,
- (2) the client is taking title to the real property,
- (3) the real property will be the client's home, and
- (4) the client has no other assets.

Under such circumstances, the risk of being held liable is reduced because there are no other beneficiaries to hold the personal representative accountable and there are no other assets in the estate to be lost. Such an action is not risk free altogether because outstanding creditors of the estate may still hold the personal representative liable, and if the debt is great, the

inherited property could be encumbered or sold to satisfy the debt. (If the estate has a significant number of creditors, advertising should be considered. See the section “Estate Administration” for further discussion.)

These factors should be considered when you and the client consider the best course of action (e.g., probate or a § 3546 petition) the client should take to gain title to the property.

### III. Initiating Probate

#### A. TIME LIMITS FOR PROBATE

There is no time limit for probating a will. (See 20 PA. C.S. § 3133(a)) However, you must file a petition in order to probate an estate when the decedent died more than 21 years ago in Orphans’ Court. (See 20 PA. C.S. § 3152). (See the Resource Library for a sample petition) When this is a necessary step, VIP has additional templates and resources available to assist with admitting the will. Please reach out to your VIP staff contact for additional assistance.

#### B. FILING A PETITION FOR PROBATE AND GRANT OF LETTERS

Probate is done at the Register of Wills in the county where the decedent lived at the time of his or her death. (See 20 PA. C.S. § 3131) In Philadelphia, the Register of Wills’ Office is located in City Hall, Room 180, in the northwest corner, and is open Monday through Friday, 8 am to 4 pm.

When initiating probate, the client will file a Petition for Probate and Grant of Letters.

- If the decedent had a will *and* that will names the client as the personal representative of the estate, the client will need to file for *Letters Testamentary*.
- If the decedent did not have a will, or if the decedent’s will does not name the client as the personal representative of the estate, the client will need to file for *Letters of Administration*.

#### 1. Commencing the Process Through Electronic Filing

Effective September 15, 2008, the Register of Wills now requires all attorneys to file the Petition for Probate and Grant of Letters electronically. [You can access the e-filing system here](#). This is the same system used by the Philadelphia Orphans' Court, so attorneys who already have a username, password, and PIN through OCEFS (Orphans' Court Electronic Filing System) can use that same login information. If you do not already have a username, password, and PIN through OCEFS, you can apply for them through the e-filing website.

When filing electronically, you will need to have the following documents handy:

- o the decedent’s death certificate
- o the decedent’s will, if the decedent left a will
  - *Note:* If the original will is no longer available, the Register of Wills

requires a separate petition and brief informal hearing to probate a copy of the will. (See [the Philadelphia Estate Practitioner Handbook](#), Blue Book, Chapter 2, Part B, for more information on probating a copy of a will.) When this is a necessary step, VIP has additional templates and resources available to assist with admitting the will. Please reach out to your VIP staff contact for additional assistance.

- answers to the questions on the Petition for Probate and Grant of Letters, Oath of Personal Representative(s), and Estate Information Sheet, or the completed forms themselves. (See Resource Library for sample forms.)
  - Note that in some cases – for example, if there is no will or if the person named as the personal representative in the will cannot act – the Register of Wills may require you to file additional forms, such as a more formal Petition for Citation.
- the names and contact information of heirs who have renounced their rights to serve as the personal representative (see Resource Library for a sample renunciation form)
  - Note that a renunciation is not the same as an heir’s release of his or her right to receive estate property. In order for an heir to transfer his or her interest in estate property, he or she must sign a deed. (See the section “Estate Administration” for a discussion of how an heir can transfer his or her interest in the property to your client.)
  - An individual only needs to be 14 years of age or older to validly renounce his or her right to service as a personal representative. (However, an individual needs to be at least 18 years of age in order to validly sign a deed transferring his or her interest in a property to another.)
  - If an original heir is now deceased, only the heirs of the deceased heir need to be included.

## 2. Completing the Process at the Register of Wills’ Office

After electronically filing the Petition for Probate and Grant of Letters, you and your client (or the personal representative, if different from your client) must still go to the Register of Wills’ office in person to complete the probate process.

You and your client should bring the following with you:

- an original of the decedent’s death certificate
- the decedent’s original will, if the decedent left a will
  - *Note:* If the original will is no longer available, the Register of Wills

requires a separate petition and brief informal hearing to probate a copy of the will. (See the [Philadelphia Estate Practitioner Handbook](#), Blue Book, Chapter 2, Part B)

- the person who is going to be named as the personal representative of the estate and that person's photo identification
  - *Note:* If the person applying for Letters has the right to serve as personal representative because he/she is the child of the decedent, that person must be able to demonstrate that the decedent was indeed his/her parent. If the person has the same last name as the decedent, the Register of Wills should accept this as sufficient proof. However, if the person has a different last name, he/she will need to present his/her birth certificate that lists the decedent as a parent.
- any renunciations of heirs who renounce their rights to serve as the personal representative (see Resource Library for a sample renunciation form)
  - Note that this form is not the same as an heir's release of his or her right to receive estate property. In order for an heir to transfer his or her interest in estate property, he or she must sign a deed. (See the section "Estate Administration" for a discussion of how an heir can transfer his or her interest in the property to your client.)
  - An individual only needs to be 14 years of age or older to validly sign a renunciation form. (However, an individual needs to be at least 18 years of age in order to validly sign a deed transferring his or her interest in a property to another.)
- payment for the probate fees (payable by cash, certified check, law firm/company check or money order made payable to "Register of Wills," or credit card; see "Step 4: Applying to the Tangled Title Fund" for information on applying to the Tangled Title Fund in order to pay this cost.)
  - The probate filing fee is based on the value of the assets in the estate, which for VIP clients usually consists only of the real property in question. You should use the market value for the year the decedent died listed on the OPA website to determine the value of the property. If there is no market value listed for the year needed, an inquiry can be submitted from the website. The value needed will be emailed within a few days. (See the section "Basic Property Information" for information on accessing the OPA website.)
    - Note that there is no *penalty* for undervaluing the value of the estate assets on the Petition for Probate. However, if the value of the estate assets turns out to be higher on the Inventory form and Inheritance Tax Return, there will be an additional probate filing fee due at that time.
- The base filing fee is \$370.25 for estates valued from \$10,000 to

\$50,000. If the estate's value is less than \$10,000, the fee is smaller. You can find the [Register of Wills' most current fee schedule here](#).

- There is an additional charge of \$15 for every renunciation filed and for every short certificate requested. However, short certificates are usually only needed if the decedent had an asset that is held or managed by a third-party (e.g., a bank account).
- a pre-addressed, stamped envelope, for the Grant of Letters to be mailed back to you

Additionally, if the decedent left a will and if that will is *not* self-proving, the witnesses to the execution of the will must appear at the Register of Wills to verify the will as that of the decedent. If those witnesses are unavailable, then two other people who can verify the signature on the will as that of the decedent's must appear. When this is a necessary step, VIP has additional templates and resources available to assist with admitting the will. Please reach out to your VIP staff contact for additional assistance.

### C. THE GRANTING OF LETTERS

Once the Petition for Probate and Grant of Letters is filed, it takes the Register of Wills about 7-10 business days to approve the Petition and issue a Grant of Letters. At that point, they will send you a postcard indicating that the Petition has been approved and that you or your client can pick up the official Grant of Letters. Alternatively, you can leave a pre-addressed, stamped envelope with the Register of Wills at the time of probate, and they can mail the Grant of Letters to you.

Additionally, the Register of Wills will also issue "short certificates" evidencing the personal representative's appointment for the estate, if they were requested. These short certificates may need to be produced when the personal representative takes certain actions on behalf of the decedent or estate (e.g., with a bank account of the decedent's).

## IV. Estate Administration

### A. DUTIES OF THE PERSONAL REPRESENTATIVE

Once the estate is opened, the personal representative, through his or her volunteer attorney, has several duties, which are detailed below in the general order in which they should be performed.

First, however, **it is important to note that some of these duties can (and indeed sometimes, should) be performed out of order.** Most notably, it is often practically important for the estate assets (which generally only entail the real property in question) to be distributed (e.g., through filing a deed) very early in the administration process. VIP clients often need legal title to their properties very quickly in order to apply to a repair program or remain in a payment plan to avert a Sheriff's sale. Of course, it is up to you and the client to discuss the timing of the administration process and how things can best proceed from a legal and practical standpoint.

#### 1. Notice to Heirs

A Notice of Beneficial Interest in Estate should be sent to the following persons:

- *if the decedent had a will:*
  - any person and/or entity named in the will as an outright beneficiary
  - any person who would be an intestate heir if the will did not exist
  - the decedent's spouse and children
  
- *if the decedent did not have a will:*
  - all intestate heirs
  - the decedent's spouse and children

(See Resource Library for a Notice of Beneficial Interest in Estate form. See also Pa. Sup. Ct. Orphans' Ct. R. 5.6, for a full explanation of who must receive written notice of estate administration.) Technically, this notice should be sent within three (3) months of the personal representative being appointed. However, if your VIP client received Letters several months ago without having sent the Notice (e.g., before he or she was your client), you should simply send it as soon as is practicable.

A Certification of Notice to Heirs should then be filed with the Register of Wills to show that appropriate notice was given. (See Resource Library for a sample form.) When filing the Certification of Notice to Heirs, you should take an additional copy with you to have time-stamped for your records.

## 2. Advertising

Technically, Pennsylvania law requires that all personal representatives advertise the administration of an estate three times in both a newspaper of general circulation and in the *Legal Intelligencer*. (See 20 PA. C.S. § 3162) Once advertising occurs, it starts the one-year statute of limitations that creditors have to come forward and make a claim against the estate. The purpose of advertising is to insulate the personal representative against personal liability for distributing estate assets before all creditors have had an opportunity to present claims against the estate. (Ask a VIP staff member for contact information and rates for publication.)

Note that the one-year statute of limitations that creditors have to come forward and make a claim against the estate only applies to unknown creditors. If a creditor entered a judgment against the decedent during her lifetime and/or placed a lien on her real property, such claims cannot be cutoff by advertising. They remain as debts of the estate. In addition, a creditor's rights cannot be extinguished if the personal representative knows the claim exists. To assess whether there are any "known" creditors of the estate review the title report (see the section "Title Report") and ask your client whether she is receiving any bills or collections notices in the decedent's name.

### *a. Deciding Whether to Advertise*

Advertising is often pragmatically unnecessary when administering very small or insolvent estates if:

- (1) the client is fairly certain that there are no creditors who can make a claim against the estate for debts left owing by the decedent, *and*
- (2) the client is both the personal representative and the only heir receiving property from the estate.

This is because a personal representative is personally liable for any estate assets that he or she distributes without first satisfying the decedent's debts. (See the section "Personal Representatives".) Furthermore, an heir who receives estate assets before all of the decedent's debts have been satisfied risks having to return those assets (or their value) to the estate should a creditor come forward later and make a claim against the estate. Thus, a personal representative would only want to consider distributing estate assets without advertising *if* he or she was assured that he or she could recover those assets should a creditor come forward down the road. As a result, when the client is both the personal representative and the only heir receiving property from the estate, he or she is not taking much of a risk by not advertising, especially if it is unlikely that there were creditors at all, since he or she could have to return to the estate only the property (or its value) that the personal representative received as an heir.

### *b. If You and Your Client Decide to Advertise*

Should you and your client decide to advertise, it is important to investigate the rates of advertising in various newspapers of general circulation. (Ask a VIP staff member for contact information and rates for publication and for sample publication forms for various newspapers.) Once you do advertise the estate administration, the newspapers will send you

proofs of publication evidencing the advertising. You should file these proofs with the Register of Wills, being sure to take an additional copy with you to have time-stamped for your records.

After advertising, if a creditor comes forward to make a claim against the estate, you should look into whether your client can claim a family exemption for the real property in questions. (See the section “Estate Administration” for a further discussion of the family exemption.)

### 3. Inventory

An inventory contains an accurate listing and valuation of all assets owned by the decedent. Such assets include real property, personal property, banking accounts, and safe deposit boxes.

An inventory form should be filed in duplicate with the Register of Wills. (See Resource Library for an inventory form. Note that the duplicate can simply be a copy; it does not need to be an original.) When filing the inventory in duplicate, you should take an additional (third) copy with you to have time-stamped for your records.

Note that the inventory sheet is the only form (other than the initial Petition for Probate) that the Personal Representative’s attorney cannot sign in lieu of the Personal Representative. The Personal Representative must be the individual who signs this form.

### 4. Inheritance Tax Return

A Pennsylvania inheritance tax return for the estate needs to be filed in duplicate with the Register of Wills, and any inheritance tax owed needs to be paid. (See “Step 6: Pennsylvania Inheritance Tax Returns”.) Note that the federal estate tax is generally not applicable to VIP clients, as it only applies to estates with assets in excess of \$11,580,000 as of January 1, 2020. The exemption is subject to change annually.

If you are assisting your client in administering an estate that someone else had previously also administered, you should find out if an inheritance tax return has already been filed. In order to do so, you should contact the Pennsylvania Department of Revenue, Philadelphia Inheritance Tax Unit, at (215) 560-3685.

### 5. Income Tax Returns

A final income tax return for the decedent should be filed, if applicable.

#### *a. Federal Income Tax Return Requirements*

To determine if filing a federal income tax return for the decedent is necessary, please see [IRS Publication 17 \(2021\)](#). Table 1-1.2021 provides summary of the gross income amounts that require the filing of a federal tax return. As of March 2023, a single person over the age of 65 at the end of 2021 must file a return if the gross income was at least \$12,950. Note that only a portion of social security income is counted as “gross income” for the purpose of determining whether the decedent needed to file an income tax return.

b. *Pennsylvania Income Tax Return Requirements*

To determine if filing a state income tax return for the decedent is necessary, please see the [Pennsylvania Personal Income Tax Guide](#). Note that a Pennsylvania income tax return must be filed for a decedent who had gross Pennsylvania taxable income exceeding \$33. (See page 5.) In addition, note the types of income that are taxable by Pennsylvania (e.g., salary or wages) and that are not taxable (e.g., social security and public assistance). (See page 20.)

6. Debts of the Decedent and the Family Exemption

Remaining debts of the decedent should be paid out of the estate assets. If there are debts of the decedent, or claims against the estate, that put your client's ability to obtain title to the real property in question, you should look into whether your client can claim a family exemption for the real property in questions.

Pennsylvania law provides that real and/or personal property in the decedent's estate valued up to \$3,500 is exempt from all other claims against the estate (except the costs of administration) for the following individuals:

- (1) the surviving spouse, *or*
- (2) if there is no surviving spouse, children of the decedent who were members of the decedent's household, *or*
- (3) if there are no surviving spouse and no surviving children, the parent(s) of the decedent who were members of the decedent's household

(See 20 PA. C.S. § 3121, 20 PA. C.S. § 3392)

- Note that the family exemption for deaths from June 27, 1974 to January 29, 1995 is only \$2,000. For death after January 29, 1995, the exemption rises to \$3,500.

Under 20 PA. C.S. § 3123, an heir claiming real property pursuant to the family exemption may have to obtain appraisals of the property before he or she receives title to the property. [Pennsylvania Supreme Court Orphans' Court Rule 12.1](#) and [Philadelphia Orphans' Court Rules 12.1.A-C](#) address when exactly such appraisals are required.

If there are outstanding claims against the estate and your client cannot claim a family exemption, you should discuss with VIP and with your client whether the client should still obtain title to the property.

7. Distribution of Assets

Assets that remain after inheritance tax, income tax, and the decedent's debts have been paid should be distributed. Assets are distributed according to the decedent's will and/or state intestate law. (See 20 PA. C.S. §§ 2102-2103)

- o *Note:* An individual needs to be at least 18 years of age in order to validly give up his or her interest in a property to another. If an heir is under 18 years of age,

only the person appointed guardian of the minor's estate can sign on his or her behalf. If your case involves an heir who is willing to sign over his or her interest but who is under 18 years of age, please contact a VIP staff member for guidance on how to proceed. (See the section "Helpful Resources and Contact Information" for our contact information.)

It is important to note that if an heir transfers his or her interest in inherited property to another individual (e.g., your client), the transfer is considered a "gift" for gift tax purposes. However, because gift tax is not imposed unless an individual transfers more than \$12,060,000 of "gifts" during his or her lifetime, gift taxes are generally not applicable to transfers made in VIP cases.

*a. Distribution of Real Property*

If all of the decedent's heirs agree to transfer their interest in the property to your client, it is best for the heirs to effectuate that transfer by signing a deed. (See the section "Preparing and Recording a Deed for Transfer of the Decedent's Property" for information on transferring title.)

- *Note:* An alternative is for the heirs to disclaim their interest in the property by signing a Disclaimer of Interest form. However, **it is advisable in most circumstances to use a deed rather than a disclaimer form.** When an heir disclaims his or her interest in estate property, that disclaiming heir is treated as having predeceased the decedent, which may in turn have the undesirable result of involving *more* heirs in the title transfer process.

Should your client's circumstances appear to warrant the usage of a Disclaimer of Interest form rather than a deed transferring title to your client, you should discuss the issue with VIP. VIP can also provide you with a sample Disclaimer of Interest form to use.

**However, if any heir does not agree to transfer his or her interest in the property to your client, you should try persuading him or her to do so.** See discussion above.

*b. Distribution of Other Property*

If there are estate assets other than the real property in question, additional documents will need to be completed in order to effectuate a valid distribution.

*If all heirs agree to distribution in accordance with the decedent's will or state intestacy law, as applicable, an accounting should be completed, listing the assets in the estate, the payment of debts out of the estate, and the distribution of the balance to the heirs. (See Resource Library) You should then retain this accounting (called an informal accounting, because there is no court approval of it) for your records.*

*If all heirs agree to a distribution that differs from that specified in the decedent's will or state intestacy law, as applicable, a Family Settlement Agreement should be signed by all heirs. (See Resource Library) An accounting should be attached to the Agreement, listing the assets in the estate, the payment of debts out of the estate, and the distribution of the balance to the heirs. (See Resource Library) You should then retain this agreement and accounting for your records.*

*If all heirs will not sign a Family Settlement Agreement, a Petition for Adjudication and Statement of Proposed Distribution will need to be filed with Orphans' Court. (See Resource Library) This is called a formal accounting. An accounting should be attached to the Petition, listing the assets in the estate, the payment of debts out of the estate, and the distribution of the balance to the heirs. (See Resource Library)*

#### 8. Filing of a Final Status Report and Closing the Estate

Once the estate administration has concluded, the personal representative should file a final status report with the Register of Wills, so that the Register of Wills knows that the matter is at an end and that the estate file can be considered closed. (See Resource Library for a sample Status Report.) When filing the final status report, you should take an additional copy with you to have time-stamped for your records.

Once the estate file has been closed at the Register of Wills, you should also send the following to the personal representative (which in most cases is your client):

- the original Grant of Letters
- proof of advertising, if applicable
- the original accounting, if applicable
- the original Family Settlement Agreement, if applicable
- time-stamped copies of all other documents filed with the Register of Wills

#### B. PREPARING AND RECORDING A DEED FOR TRANSFER OF THE DECEDENT'S PROPERTY

Once you are ready to record a deed to transfer title of the decedent's property, you need to consider whether your client needs to obtain title insurance and then record the appropriate documents with the Department of Records.

##### 1. Considering Whether to Obtain Title Insurance

**Before a deed conveying title to the client is executed and recorded, you should always consider whether the client should obtain title insurance.** Title insurance serves 2 primary functions: (1) it insures that the client has indeed received good title to the property, and (2) it insures that the client has received free and clear (unencumbered) title to the property.

- Note that title insurance does not "clear" pre-existing liens and encumbrances from the property that are listed on the title report. It simply insures the buyer against any liens and encumbrances that the title insurance company did not pick up in its title report and that could theoretically arise in the future.

It is VIP's advice that you and your client always explore a title insurance policy to see what level of coverage could be provided. In making the decision as to whether your client should obtain title insurance, you should consider the following:

- If the client is receiving title from the record owner(s) pursuant to an agreement (e.g., a lease/purchase agreement or an agreement of sale) or because the record owner(s) otherwise wishes to transfer their interest to the client, title insurance

can insure that the client has received good title to the property.

- If the record owner(s) is supposed to be transferring title to the client title “free and clear” of all liens and encumbrances (e.g., pursuant to an agreement that specifies that the client is to receive title free and clear), title insurance can insure that the client receives such free and clear title.
- Title insurance may not be necessary if there has been a court order (e.g., pursuant to a quiet title) issued that vests title in the client.
- If there are many liens and encumbrances on the property, which would have to be accepted from the policy, it may not be practical (or even possible) to obtain title insurance.
- Title insurance is usually not necessary for probate cases.

Please do not hesitate to contact Philadelphia VIP should you have any questions or concerns about title insurance. (See the section “Helpful Resources and Contact Information” for our contact information for our contact information.) **If you are uncertain as to whether your client needs to obtain title insurance, you should contact VIP to discuss the issue before the deed transferring title to the client is executed and recorded.**

## 2. If You and Your Client Decide to Obtain Title Insurance

**If you and your client decide to obtain title insurance, it is very important that the deed not be executed nor recorded until the title insurance company holds a settlement meeting with the necessary parties.** This is to ensure that the title insurance company does, indeed, deem the transfer to be insurable or, alternatively, that any problems with title are cleared up before the deed is executed and recorded. Thus, if title insurance is necessary, **it is the attorney's responsibility to have the title insurance company conduct a closing where title is transferred.**

The title company will conduct the actual execution of the deed. In order to conserve funds, however, you should (1) prepare the deed to be signed, using the guidance in the section below, and (2) give the documents to be recorded to VIP, as described below, so that the recording fee is waived. (See Resource Library for sample deeds. Note that you will need to prepare a deed, described in further detail below.)

- *Important:* All deeds should be given to VIP to be recorded, because James P. Leonard, Commissioner of the Department of Records, has generously agreed to record documents for VIP clients with a waiver of the typical recording fee. **Due to this arrangement, please note that neither VIP nor the Tangled Title Fund will reimburse volunteer attorneys, their firms, or our clients for recording fees.**

Please note that Tangled Title Funds are available to cover the cost of the title insurance premium. (See “Step 4: Applying to the Tangled Title Fund”.)

## 3. If You and Your Client Decide Not to Obtain Title Insurance

If you and your client decide **not** to obtain title insurance, you should send your client a letter explaining the liens and judgments listed on the title report and confirming your and your client's joint decision not to obtain title insurance. (See Resource Library for a sample letter.) It is very important that your client fully understands what he or she is taking title to and be aware of and comfortable with the liens and judgments showing on the title report.

#### 4. Preparing the Deed and Accompanying Documents

Once you and your client have determined whether your client needs title insurance *and* once you have sent your client a letter confirming this decision, you can then move forward in recording the appropriate documents to transfer title to your client. When you are ready to record a deed to transfer title of the decedent's property, the deed documents need to be prepared.

##### *a. Preparing the Deed*

The following points should be considered in preparing the deed:

- See the Resource Library for sample deed forms.
- The grantors of the deed should be listed as (1) your client, acting as the Personal Representative of the estate of the decedent, (2) your client individually, and (3) all other heirs.
- The grantees should be listed as your client and any other heir(s) retaining an interest in the property.
- If the heirs have signed a Family Settlement Agreement (see discussion in the section "Estate Administration"), it should be referenced in the recitals of the deed (i.e., in a "whereas" paragraph) and attached as an exhibit.
- The recitals (paragraphs) in the deed should include information on the last recorded deed (the deed where the decedent had obtained title), as the sample deeds in the Resource Library illustrate:
  - Prior to December 6, 1999, deeds were identified by deed book name, number, and page number. The deed book name is derived from the initials of the Commissioner of the Department of Records in office at the time the deed was recorded. (See Resource Library for a list of deed book names according to years.) The deed book number and the page number appear on the deed itself, generally stamped at the top of the page. As an example, a deed recorded in 1982 and stamped with "D 0365 278" would be recited as "Deed Book E.F.P., No. 365, at page 278."
  - Since December 6, 1999, deeds are now given a "Document ID" number that is used in lieu of the deed book name, number, and page number.

##### *b. Completing the Transfer Tax Forms*

The following points should be considered in completing the transfer tax forms:

- VIP suggests listing the client, rather than yourself or a paralegal, as the “Correspondent.”
- You do not need to list a tax parcel number in Section C.
- In completing the “Valuation Data” section on the forms:
  - You must state the actual consideration that the grantee paid for the property, if any.
  - The “County Assessed Value” can be found on the Office of Property Assessment (OPA) website. (See the section “Basic Property Information” for information on accessing the OPA website.) The OPA’s market value for the current year is the “County Assessed Value”.
  - The Common Level Ratio Factor (CLRF) is now 1.00, effective July 2022. **Changes in the CLRF typically occur every July 1.** The numbers can be found on [PA Revenue’s website](#).
  - See the instruction pages that accompany the transfer tax forms for additional information on completing the forms.
- *Note:* You must always submit transfer tax forms with any deed that is being recorded, even if the transfer is excluded from transfer tax.

*c. Payment of and Exclusion from Transfer Tax*

Title transfers made as a result of probate and § 3546 Petitions are often – though not always – excluded from transfer tax:

- If the client is obtaining title through testate or intestate succession, whether through probate or a § 3546 Petition, the transfer is excluded from transfer tax.
- However, if another heir to the property is giving his or her interest in the property to the client, the value of that heir’s interest in the property may be subject to transfer taxes.
  - Transfers between the following familial relationships are excluded from transfer tax
    - Husband and wife
    - Divorced couple if the property was acquired before the divorce decree was issued
    - Parent and child
    - Parent and child’s spouse
    - Siblings
    - A sibling and a his or her sibling’s spouse

- Grandparent and grandchild
  - Grandparent and spouse of grandchild
  - Stepparent and stepchild are exempt from Pennsylvania and Philadelphia transfer tax
- Transfers between the following familial relationships are not excluded from transfer tax
    - Aunt/Uncle and niece/nephew
- *Important Note:* In November of 2007, the City amended the Philadelphia Code to exempt from Philadelphia real estate transfer tax “financially interdependent persons” (FIPs). FIPs are defined in Phila. Code § 19-1402 as “persons who live together as a single household and who, for at least six months, have agreed to share the common necessities of life and to be responsible for each other’s common welfare.” In order to claim this exemption, you should explain your client’s status as an FIP in relation to the grantor on the city transfer tax form. Note that this exemption applies only to Philadelphia, and not Pennsylvania, transfer tax.
  - See 72 PA. C.S. § 8102-C.3, and Phila. Code § 19-1405 to determine if your client’s title transfer is excluded from transfer tax.

*If the transfer is subject to transfer tax, you must submit payment for the transfer tax along with the deed and transfer tax forms:*

- Transfer tax is a percentage of one of the two following values:
  - *If your client obtained title through a bona fide arm’s length sale for actual monetary worth, then it is a percentage of the total consideration paid.*
  - *If your client instead obtained title by inheritance, by gift, or for consideration less than the actual monetary worth of the real estate, then it is a percentage of the “fair market value.” The “fair market value” is the OPA total assessed value multiplied by the current year Common Level Ratio Factor. (See the section “Preparing and Recording a Deed for Transfer of the Decedent’s Property” for how to find these figures.)*
  - See 72 P.S. § 8101-C(1) and (2) and Phila. Code § 19-1402(14) for a further explanation of how to use these values to calculate the transfer tax owed.
- Philadelphia transfer tax is 3.278 % of the value as determined above. Checks or money orders should be made out to “City of Philadelphia.”
- Pennsylvania transfer tax is 1% of the value as determined above. Checks or money orders should be made out to “Commonwealth of Pennsylvania.”

Transfer tax can be paid for by the Tangled Title Fund. See “Step 4: Applying to the Tangled Title Fund”.

## 5. Recording the Deed and Accompanying Documents

Once you have prepared the documents as explained above and are ready to record them, **they should be sent to VIP by certified mail, hand-delivery, or some other type of delivery that can be tracked (since the original, executed deed is being transmitted), so that VIP can record it with the Recorder of Deeds with a waiver of the usual recording fee.** You should send the following documents:

- the executed Deed
- 2 copies of the Philadelphia Real Estate Transfer Tax Certification and 1 copy of the Pennsylvania Realty Transfer Tax, Statement of Value
- *if the transfer is subject to transfer taxes, payment for Philadelphia and Pennsylvania transfer taxes*

The Commissioner will then record the Deed, thus transferring legal title to the client. VIP will then return the original recorded Deed to you, so that you can then transmit it to your client.

- *Important*

**All** deeds should be given to VIP to be recorded, because James P. Leonard, Commissioner of the Department of Records, has generously agreed to record documents for VIP clients with a waiver of the typical recording fee. **Due to this arrangement, please note that neither VIP nor the Tangled Title Fund will reimburse volunteer attorneys, their firms, or our clients for recording fees.**

## STEP 6: PENNSYLVANIA INHERITANCE TAX RETURNS

As noted earlier, a Pennsylvania inheritance tax return should be filed with the Register of Wills for every estate opened for probate and for any real estate transferred as a result of a successful § 3546 Petition for Determination of Title. (See the [Pennsylvania Department of Revenue website](#) for inheritance tax return forms and instructions.)

Pennsylvania inheritance tax is imposed on the transfer of property at death. The amount of tax depends upon the total value of the property transferred and the relationship between the decedent and the recipient of the property.

Note that the federal estate tax is generally not applicable to VIP clients, as it only applies to estates with assets in excess of \$12,920,000 as of January 1, 2023.

Please utilize the Philadelphia VIP “Inheritance Tax Guide” in the Resource Library to assist with completing the return, or speak with a VIP staff member.

### I. Filing Requirements

A Pennsylvania inheritance tax return must be filed on behalf of any decedent who resided in Pennsylvania at the time of his or her death if there is any reportable property that is subject to inheritance tax, *even if no tax is due*.

Technically, the return should be filed within nine (9) months after the date of the decedent’s death; if it is filed after that time, interest will accrue. However, we advise all VIP volunteer attorneys to contact the Pennsylvania Inheritance Tax Division to request a waiver of such accrued interest, particularly in cases where the decedent died many years ago. (See the section “Submitting the Return and Paying What is Owed”.)

A prepayment discount of five percent (5%) is allowed if any portion of the tax due is paid within three (3) months after the date of death.

- *Practical Tip:* VIP strongly recommends that you list yourself as the “Correspondent” on the return, so that you directly receive all future correspondence from the Department of Revenue. Under “Signature of Person Responsible for Filing Return,” either you or your client can sign. If you have your client sign as the person responsible for filing the return, you should then sign under “Signature of Preparer Other than Representative.”

### II. Preparing an Inheritance Tax Return

#### A. TAXABLE ASSETS

The following assets are generally taxable:

- property owned solely by the decedent
- property that the decedent owned jointly with persons other than the

decedent's spouse (whether as tenants in common or joint tenants with right of survivorship), *but only* as to the decedent's fractional interest in the joint property

- property in which the decedent retained any interest or power
- certain pensions and other employee benefits
- real estate that falls within one of the above categories and that is located in Pennsylvania

However, it is important to note that when an inheritance tax return is being filed on real property transferred as a result of a § 3546 Petition, the return should list only the property transferred as a taxable asset.

When valuing real property for the purpose of the inheritance tax return, you should start with the market value of the property as of the decedent's year of death, as found through the Philadelphia Office of Property Assessment (OPA), since clients typically cannot afford an appraisal to determine the value of the property on which transfer tax is based.

- *If the decedent died within the last 5 or 6 years, the market value of the property should be available on the OPA's website. (See the section "Basic Property Information" for information on accessing the [OPA website](#).)*
- *If the decedent died more than 5 or 6 years ago but since the early- to mid-1990s, you will need to locate the property on the [OPA website](#) and then click the "submit the official inquiry" button to request the assessed and market value of the property at the time of the decedent's death. (See the section "Basic Property Information" for information on accessing the OPA website.) You will receive an email confirmation shortly after submitting your request and should receive a substantive response within about a week.*

You should then multiply the OPA total assessed value by the CLRF as of the time of the decedent's death in order to determine the fair market value of the property for inheritance tax purposes. (See Resource Library for a list of CLRFs.) If the OPA only provides you with a market value, then you should use that value alone on the inheritance tax return (you should not multiply it by the CLRF).

- *If the decedent died before the early- to mid-1990s and the OPA is not able to provide you with the assessed or market value of the property at the time of the decedent's death, please contact a VIP staff member, so that we can ask our Department of Records contact for assistance. (See the section "Helpful Resources and Contact Information" for our contact information.)*

## B. NON-TAXABLE ASSETS

The following assets are generally not taxable:

- property that the decedent owned jointly with his or her spouse
- life insurance proceeds not payable to the decedent's estate
- real estate located outside of Pennsylvania

## C. DEDUCTIONS AND EXEMPTIONS

In computing the value of assets transferred at death, certain deductions are allowed, for example:

- (1) costs of administering the estate;
- (2) funeral and burial expenses, which can be estimated based on typical expenditures at the time of the decedent's death. The National Funeral Directors Association website includes statistics on average funeral costs. See the VIP Resource Library for "[Historical Funeral Costs](#)." You may also contact a VIP staff member for further information on estimating these expenses. (See the section "Helpful Resources and Contact Information" for our contact information);
- (3) debts of the decedent, which may include:
  - the balance of a mortgage owed as of the decedent's date of death
  - delinquent real estate taxes as of the decedent's date of death. Interest owed on real estate taxes (if the amount of interest owed is known as of the decedent's date of death) and real estate tax judgments are also deductible. If a real estate tax judgment was entered in Municipal Court prior to the decedent's death, include the full amount as a deduction. Just be sure the client knows that the decedent did not pay the judgment in full or in part before death.
  - delinquent water/sewer charges
  - credit card debt
  - medical expenses of the decedent's last illness

Additionally, a family exemption of \$3,500 may be claimed by the surviving spouse or, if there is no surviving spouse, by children of the decedent who were members of the decedent's household or, if there are also no surviving children, by the parent(s) of the decedent who were members of the decedent's household. (See 20 PA. C.S. § 3121)

- Note that the family exemption for deaths from June 27, 1974 to January 29, 1995 is only \$2,000. For death after January 29, 1995, the exemption rises to \$3,500.

Any property that passes to a charity is also exempt from inheritance tax.

#### D. INHERITANCE TAX RATES

Inheritance tax is imposed at different rates based on the recipient's relationship to the decedent. The following rates went into effect in July 2000 and are current as of March 2023:

- Property passing to a surviving spouse is not taxed. (72 PA. C.S. § 9116.)
- Property passing to a parent, grandparent, and lineal descendants and their spouses is taxed at the rate of 4.5%.
  - *Important Exception:* If the decedent was 21 years or younger at the time of his or her death, property passing to a natural parent, adoptive parent, or step-parent is not taxed.

- Property passing to siblings (including siblings of the whole- or half-blood and adoptive siblings, *but not* step-siblings) is taxed at the rate of 12%.
- Property passing to all other persons is taxed at the rate of 15%.

If the decedent died prior to July 2000, you should consult the [Pennsylvania Inheritance Tax Historic Tax Rates Form](#).

#### E. CALCULATING THE AMOUNT OF TAX OWED

Once you finish preparing the various schedules for the inheritance tax return, the return will walk you through calculating the principal amount of tax owed, using the inheritance tax rates discussed above. Once you have determined the principal amount of tax owed, you do *not* need to calculate the interest and penalties owed; the Department of Revenue will automatically calculate the interest and penalties owed once the return is submitted.

### III. Submitting the Return and Paying What Is Owed

VIP recommends that its volunteers take the following steps in submitting the inheritance tax return and dealing with payment of the tax.

#### A. COLLECTING FUNDS TO PAY FOR THE TAX

VIP recommends that you submit a disbursement request to the Tangled Title Fund in order to pay the principal amount of inheritance tax owed. (See “Step 4: Applying to the Tangled Title Fund”.) You will need to include a copy of the inheritance tax return when submitting your disbursement request.

In cases where the client is receiving property through multiple estates, VIP strongly recommends filing tax returns for all estates involved, **but** only paying the principal of the most recent estate to pass the property to the client. You should request waiver of principal, interest and penalties for all older estate(s). See Section II.C.

- *Example:* The last record owner of the property was client’s grandfather. The grandfather’s interest passed to his only intestate heir, client’s father, and then upon the father’s death, to client. You only probated the estate of client’s grandfather and simply included recitals in the deed explaining how title passed through client’s father. However, you should still file inheritance tax returns for the grandfather’s estate and for the father’s estate. You should then follow the steps outlined immediately below.

#### B. FILING THE RETURN AND SUBMITTING PAYMENT

Once you have the funds (i.e., from the Tangled Title Fund) to pay for the principal amount of inheritance tax owed *only* on the property he or she is receiving from the most recent estate, you should submit the inheritance tax return and payment. The return should be filed with the Register of Wills of the county where the decedent lived at the time of his or her death.

You should take 2 originals and 1 copy (to be time-stamped for your records) when you file.

- *If the decedent's estate is being probated, the return should be signed by the personal representative under "Signature of Person Responsible for Filing Return," and you should sign the return under "Signature of Preparer Other than Representative." The return should then be filed with the Inventory of the decedent's assets. No filing fee is required, because the initial probate filing fee that the personal representative paid when submitting his or her Petition for Letters included a filing fee for the inheritance tax return.*
- *If the client is filing the return only for real property received pursuant to a § 3546 Petition, the return should be signed by your client under "Signature of Person Responsible for Filing Return," and you should sign the return under "Signature of Preparer Other than Representative." The return should then be filed with the Register of Wills; note that no inventory needs to be filed. There is a \$50 "miscellaneous estate" filing fee when filing an inheritance tax return where no estate has been raised (e.g., where the client instead obtained title to the decedent's property through a § 3546 petition). See "Step 4: Applying to the Tangled Title Fund".*

Once you file the return, it may take as long as 6 to 8 weeks for the Department of Revenue to process it. If you do not hear from the Department of Revenue after about 8 weeks, you may want to call them to check in on the status of the return.

The Department of Revenue should then send you a Notice that the return has been accepted as filed and that they have processed the payment you submitted for the principal amount due. This Notice will also contain the Department's calculations for the interest and penalties owed. If the Department's Notice states any discrepancies with the return you filed, you will need to follow the appropriate steps to resolve the issue.

#### C. REQUESTING AN ABATEMENT ON PRINCIPAL, AND WAIVER OF INTEREST AND PENALTIES

Once the Department of Revenue has notified you that the return has been accepted as filed and that they have processed the payment for the principal, you should request in writing that they waive the interest and penalties owed, due to the client's limited financial resources. (Ask a VIP staff member for a sample letter.)

You should request a waiver of the principal, interest, and penalties due on the older estate(s), so that the client is paying inheritance tax *only* on the property he or she is receiving from the most recent estate.

**VIP strongly recommends that you follow these steps in handling returns where there is a large amount of inheritance tax owed due to multiple estates and/or the principal owed on a single estate is particularly high:**

- Prepare inheritance tax returns for every estate involved.

- Collect funds to pay for the principal amount owed on the most recent estate. (See discussion in the section “Preparing an Inheritance Tax Return”.)
- File all of the returns, and submit payment for the principal amount owed on the most recent estate.
- Wait for notification from the Department of Revenue that the returns have been accepted as filed and that they have processed the payment for the principal amount owed on the most recent estate.
- Make a request to the Department of Revenue to (1) waive the interest and penalties owed on the most recent estate, and (2) waive the principal, interest, and penalties owed on the older estate(s). You should specifically request an “abatement of inheritance taxes, interest and penalties” in excess of the Tangled Title award (if applicable). (See contact information immediately below.)
  - *Please note:* You should make requests to the Department of Revenue for an abatement on the interest and penalties owed in the following situations:
    - (1) cases where there are multiple estates with returns being filed, and
    - (2) cases where there is only one estate with a return being filed, but the principal owed on that estate is so high that the Tangled Title Fund cannot fully fund and there will be a balance owed.
    - Ask a VIP staff member for sample letters to the Department of Revenue

**Michael L. Doyle**, Deputy Chief Counsel, is the point person within the Office of Chief Counsel at the Pennsylvania Department of Revenue for Tangled Title matters. After you have prepared and filed all applicable inheritance tax returns, you should contact Mr. Doyle at (717) 346-4649 or [mildoyl@pa.gov](mailto:mildoyl@pa.gov) to make such a request.

#### D. PAYMENT PLANS

It generally is *not* advisable for clients to formally enter into payment plans in order to pay off any inheritance tax owed. Clients who enter into formal payment plans but get behind on their payments face more consequences from the Department of Revenue than those who do not enter into formal plans.

Thus, if your client cannot pay the inheritance tax in full (e.g., if he/she is not eligible for Tangled Title Funds for some reason), he/she should informally send in payments as he/she has the money to do so, until the debt is completely paid off.

## STEP 7: DEALING WITH UTILITY CHARGES AND REAL ESTATE TAXES

### I. Delinquent Utility Charges

If your client has delinquent utility charges, you should first assist the client in resolving his or her homeownership issue, as the client cannot negotiate to establish a payment plan and/or request a waiver of certain charges until he or she has legal title. However, **if your client has received notice of a foreclosure or Sheriff's Sale for delinquent utility charges, please contact VIP immediately.**

Once the client has obtained legal title to the property, you may assist your client in entering into a payment plan for the delinquent charges. Alternatively, you can contact a VIP staff member for information on how your client can enter into a payment plan. (See the section "Helpful Resources and Contact Information" for our contact information.)

You client may be able to negotiate a settlement for delinquent water/sewer balance and delinquent real estate taxes if the total amount of delinquencies is below \$10,000. Please reach out to a VIP staff member for assistance or guidance.

### II. Delinquent and Current Real Estate Taxes

#### A. THE CONSEQUENCES OF DELINQUENT REAL ESTATE TAXES

The City collects real estate (property) taxes annually. If real estate taxes remain unpaid, penalties and interest accrue. A lien is then put on the property for the value of the unpaid taxes. A lien is like a mortgage, as in the property typically cannot be sold without the back taxes being paid in full. Particularly if the amount of delinquent taxes owed is quite high, the City can request that the property be sold in order to pay the back taxes.

Taxes run with the property, not with the person. Therefore, if an individual buys a house on which back taxes are owed, that individual is responsible for payment of the back taxes.

#### B. THE PARTIES INVOLVED WITH TAX COLLECTION IN PHILADELPHIA

The City of Philadelphia no longer owns *all* of the delinquent real estate tax liens for city properties. Instead, the City has sold many of the delinquent tax liens that originated *prior to 1997* to a company called MBIA. U.S. Bank currently acts as the trustee handling the liens for MBIA, and thus U.S. Bank is listed as the "plaintiff" when it files court actions for delinquent real estate taxes. U.S. Bank/MBIA has hired the law firm of Linebarger Goggan Blair & Sampson, LLP ("Linebarger") to represent them in collecting these delinquent taxes.

The City does still own the tax liens that originated *in or after 1997*. It also owns a small portion of the tax liens that originated *prior to 1997*. Following is how the City has divided the duties involved with collecting on its tax liens:

- The City uses its Department of Revenue to collect some real estate tax liens.
- The City uses its Law Department to represent them in court on some real estate tax

liens.

- The City has hired the law firms of Linebarger and Goehring Rutter & Boehm (“GRB”) to collect some real estate tax liens.

#### C. VIP CLIENTS SHOULD BE ELIGIBLE FOR OWNER OCCUPIED PAYMENT AGREEMENTS (OOPA) FOR DELINQUENT REAL ESTATE TAXES

On October 15, 2013 a City Ordinance modifying the Philadelphia Code on real estate taxes (Chapter 19-1300) went into effect. Under the Ordinance, all of VIP’s homeownership (tangled title) clients should be eligible for low-income payment plans for their delinquent real estate taxes.

The new guidelines permit equitable owner-occupants of property to apply for financial hardship payment agreements for delinquent real estate taxes even if their names are not on their deeds. The primary caveat is the clients must be equitable owners of their properties working toward obtaining title to their properties within three years. Previously, equitable owners were either barred from entering payment plans or were permitted to enter the plans on a case-by-case basis. Consequently, they were at high risk of losing their homes at Sheriff’s sales.

As of September 1, 2018, the new payment plan *applications* -- Owner Occupied Payment Agreement (OOPA) Applications – should be addressed to the City of Philadelphia’s Department of Revenue, Taxpayer Services.

If a VIP homeownership client has delinquent real estate taxes and/or a court action was filed, a VIP staff member advises the client to apply for an OOPA and sends the client the application. The case file you receive should note that this advice was given.

If a tax collector sues your client *after* the case is referred to you, you will need to contact the tax collector – Linebarger, Goggan, Blair & Sampson and GRB-- to request that further court action be informally postponed to give your client time to submit an OOPA application. VIP strongly encourages volunteers to either help their clients complete and submit OOPA applications or to connect clients with housing counselors for assistance. The OOPA application and a link to a list of housing counseling agencies are available in the Resource Library. If you have any questions about the new Ordinance or the OOPA applications, please contact VIP. (See the section “Helpful Resources and Contact Information” for our contact information.)

#### D. PROTOCOL FOR HANDLING CASES WITH ACTIVE REAL ESTATE TAX LITIGATION

If you receive a case where a court action was filed, VIP has already negotiated a postponement or informal stay of the action. For VIP cases, the tax collectors have agreed to indefinitely postpone or informally stay court actions to give our clients time to submit an OOPA application. It is not necessary for you to contact the tax collector to confirm the OOPA was approved and further court action was informally stayed. The case file you receive should clearly note the status of the client’s OOPA and tax case, including who is collecting the taxes – the City, GRB or Linebarger. The case file should also note the contact at the tax collector for your client’s tax case. If you are unsure of the status of the tax case, please contact VIP. (See

the section “Helpful Resources and Contact Information” for our contact information.)

### 1. How to Contact the Tax Collector

All communication with the tax collectors should be in writing. Email is fine. If you do not receive a response to an email, call. Confirm all phone calls in writing. Updates sent to the tax collector may be brief. Ask a VIP staff member for a sample email to send to the tax collector.

**At the request of the tax collectors, all correspondence with the tax collector must include:**

**In the subject line (if sending an email):**

- Property address, including zip code
- OPA #
- court case #, (if there is a tax case)

**In the body of the message:**

- Client’s name
- Property address, including zip code
- OPA #
- Court case

### 2. Whom to Contact at the Tax Collector

*Linebarger Goggan Blair & Sampson, LLP*

**Linebarger Goggan Blair & Sampson, LLP**  
4 Penn Center  
1600 JFK Blvd., Suite 910  
Philadelphia, PA 19103  
Phone: (215) 790-1117  
Fax: (215) 790-1197

*City of Philadelphia Law Department*

**Email Lisa Bender and cc Jim Zwolak**

**Lisa Bender**  
Administrative Assistant  
Phone: (215) 686-05229  
[Lisa.Bender@Phila.Gov](mailto:Lisa.Bender@Phila.Gov)

**James J. Zwolak, Esq.**  
Divisional Deputy City Solicitor  
Phone: (215) 683-5305  
[james.zwolak@phila.gov](mailto:james.zwolak@phila.gov)

**City of Philadelphia Law Department**  
1515 Arch Street, 15th Floor  
Philadelphia, PA 19102

*City of Philadelphia Department of Revenue*

**E-mail: [Revenue@Phila.Gov](mailto:Revenue@Phila.Gov)**  
**Phone: (215)989-6600**

**City of Philadelphia Department of Revenue**  
Municipal Services Building  
1401 John F. Kennedy Blvd.  
Philadelphia, PA 19102

*GRB Law*

**George Baker, Esq.**  
1425 Spruce Street, Suite 100  
Philadelphia, PA 19102-4503  
Phone: (215) 279-7271 x 23  
Fax: (215) 735-1618  
[gbaker@grblaw.com](mailto:gbaker@grblaw.com)

F. ASSISTING YOUR CLIENT IN PAYING CURRENT REAL ESTATE TAXES

Once your client has title to his/her property, it is **imperative** that he/she/they keep up with the current real estate taxes owed on the property. **The OOPA requires current taxes to be paid. If they are not paid, the client is in default of the agreement and the tax collector has the right to proceed with the tax case, if one was filed, or to initiate a tax case against the property.** Thus, it is very important that you clearly explain to the client the responsibility to pay the real estate taxes every year going forward *in addition* to the responsibility to paying under the OOPA.

As a result, you should be sure to share with your client the **important information** contained in the Resource Library regarding current real estate taxes. See the Resource Library for a sample letter to send to your client, instructions for your client on how to pay current year real estate taxes, and tips for paying real estate taxes in future years.

- *Note:* The instructions on how to pay current year real estate taxes reference “payment coupons” that should be submitted with all payments, to ensure that the City properly allocates your client’s payments. Thus, **you should print these coupons off at the [Philadelphia Department of Revenue’s website](#) and send them to your client.**
- You should advise your client that if he or she pays their current year tax bill in full by December 31 of that year, he or she can apply in the following year to the Pennsylvania Department of Revenue for a **property tax rebate**. (See Resource Library for more information on the property tax rebate program.)

## **STEP 8: HELPING YOUR CLIENT AVOID FUTURE HOMEOWNERSHIP PROBLEMS**

### I. Educating Your Client

Once your client receives title to the property, it is vital to educate the client on preventing future homeownership problems. **If the client would like assistance with estate planning, VIP advises reaching out to our offices to assist your client with opening an estate planning case – you are encouraged, but not required, to assist on this case.** Following are some simple issues you can discuss with your client at the conclusion of his or her homeownership case to empower him or her to prevent potential homeownership problems in the future:

- Encourage the client to make a will, and assist the client in making a will (or refer the client back to VIP for such assistance), that devises his or her ownership interest in the property to the individual(s) they wish to receive it
- Encourage the client to initiate formal probate proceedings (or to seek legal assistance for such) when a relative who owns property dies, so that title can be properly transferred to the relative's heirs, and encourage the client to educate his or her own heirs on this issue
- Strongly encourage the client to enter into straight sales agreements rather than lease/purchase agreements in order to purchase property, whenever possible
- Educate the client on the importance of having attorneys and title insurance companies involved when they purchase property from a third-party (non-relative) and on the consequences if such parties are not involved (e.g., receiving title to severely encumbered property)
- Educate the client on the legal significance of deeds, so that he or she understands that, by signing a deed, he or she is unconditionally signing away his or her entire interest in the property
- Strongly encourage the client to always have an attorney draw up papers to document any promise he or she makes concerning the property (e.g., a will, deed, agreement of sale)

### II. Information on Basic Estate Planning

**The substance of this section was originally prepared by Howard M. Soloman, Esquire,  
of the Law Offices of Howard M. Soloman.**

In educating your client on preventing future homeownership problems, it is useful to have a general grasp of how clients can use estate planning to protect their own interests and

their potential heirs' interests in property. Below is a brief discussion of estate planning that may be of assistance to you in discussing estate planning with your client.

#### A. DEFINING ESTATE PLANNING

Estate planning is an arrangement for the use, conservation, and transfer of property during life and upon death. It can involve an attorney, an accountant, an insurance agent, a trust officer, and/or a financial planner.

#### B. THE IMPORTANCE OF ESTATE PLANNING

Estate planning is important for several reasons:

- It can provide for the owner's lifetime needs, such as children's education, retirement income, replacement of income in the event of disability, and management of property in the event of the owner's incapacity.
- It can provide for the disposition of the owner's assets upon the owner's death in such a way that property is maximized and is left in accordance with the owner's wishes and the needs of the owner's family. Without estate planning, property will pass in accordance with state laws of intestacy, which may or may not be consistent with intent of the owner.
- It can designate a guardian for the owner's minor children in the event of the owner's death.
- It can designate a person to take over the owner's affairs in the event of the owner's incapacity.

#### C. THE FUNDAMENTALS OF ESTATE PLANNING FOR CLIENTS

##### 1. Life Planning Documents

###### a. *Powers of Attorney*

A Power of Attorney permits a designated individual, called the "agent", to act on behalf of an individual, called the "principal," during the principal's lifetime. The Power of Attorney may permit the agent to manage the principal's affairs, property, or some combination thereof. A principal must be of age to execute a valid Power of Attorney.

A Power of Attorney expires upon the death of the principal. However, a Power of Attorney can be made "durable," so that it remains effective even if the principal becomes incapacitated. It is also possible to create a "springing" Power of Attorney, which is effective only when the principal becomes incapacitated.

###### b. *Advance Directives*

Advance directives, also known as “living wills,” are used to provide guidance to doctors and family members in making decisions about medical care at a time in the event that an individual cannot express his or her own wishes due to a medical condition. Another person also can be appointed to make medical decisions on an individual’s behalf.

## 2. How Various Types of Property Pass upon Death

- Life insurance, and other assets with beneficiary designations (such as retirement accounts), pass to the named beneficiary.
- Jointly held assets with a right of survivorship (such as property held by two or more persons as “joint tenants”) automatically become the property of the surviving co-owner(s).
- Assets held “in trust for” another person pass to the designated beneficiary.
- Other probate property passes in accordance with the decedent’s will or, if the decedent did not leave a will, in accordance with state intestacy law.
  - Generally, Pennsylvania intestacy laws provide that the decedent’s property passes to his or her surviving spouse and to his or her children or parents. The surviving spouse does *not* automatically inherit all of the decedent’s estate. Instead, the decedent’s children or, if the decedent did not leave any children, then the decedent’s parents share in the estate.
  - If there is no surviving spouse, children, or parents, the property is distributed to other more distant relatives as specified in the intestacy laws. If the relatives as specified in the law cannot be found, the property will pass to the Commonwealth (which is called an “escheat”). (See 20 PA. C.S. §§ 2101-2103)

## 3. Planning for the Transfer of Assets at Death Through Wills

### *a. The Benefits of Wills*

The basic instrument for transferring property at death is a will. A will can accomplish a variety of functions to facilitate the transfer of property from the testator to his or her designated beneficiaries. For example:

- A will can allow a testator to control which individuals get their property, how much of their property each individual receives, and how and when each individual gets the property.
- A will can allow a testator to address details such as the administration of his or her estate, the payment of various fees and debts, and the appointment of a guardian for the testator’s minor children.

*b. Making and Executing a Will*

In order to make a valid will, the testator must be at least 18 years old and must have a clear idea of what his or her assets are. Additionally, the following requirements must be met in regards to execution of the will:

- If it is a holographic (handwritten) will, the entire will must be handwritten, and it must be signed by the testator.
- It must be signed by the testator at the end of the document. Any writing appearing after the signature of the testator is not valid.
- The testator should sign the will in the presence of two witnesses.
  - Under Pennsylvania law, a testator who merely signs his or her name on a will, and who otherwise meets capacity requirements, has technically executed a legally valid will. The law does not require the presence of two witnesses nor a notary.
  - However, it is strongly recommended that all testators have two witnesses present when they sign their will, for a variety of reasons. For instance, two witnesses are required either if the testator signs the will by mark or if the testator is unable to sign the will and permits another to do so in his or her stead. Additionally, most other states require the testator to sign his or her will in front of two witnesses. Thus, a will validly executed in Pennsylvania without two witnesses but admitted for probate in another state may not be accepted as valid.
- The testator and two witnesses should each sign a “self-proving affidavit” in the presence of a notary.
  - The signing of a self-proving affidavit in the presence of a notary is strongly recommended. If a will is signed by the testator and by two witnesses, and if the testator and those witnesses then each sign a separate “self-proving affidavit” in the presence of a notary, the will becomes “self-proving.”
  - A self-proving will is beneficial, because the witnesses to the will will not be required to appear before the Register of Wills when the will is offered for probate. See the section “Initiating Probate” for more information on admitting wills for probate.

*c. Elective Rights of a Surviving Spouse Against a Will*

Although the decedent's wishes as expressed in a will generally must be honored, a surviving spouse cannot be "cut out" of a will in the absence of an agreement to the contrary (such as a premarital agreement), as long as the surviving spouse and decedent were still legally married as of the decedent's death. Instead, a surviving spouse is entitled to "elect" against the decedent's will and receive a share of the decedent's assets as determined by state law.

If a spouse does elect to take against the will, he or she must give up other assets, as determined by state law. Thus, such an election must be made with care.

*d. Rights of Pretermitted Spouses and Children*

Again, although courts will generally honor the decedent's wishes as expressed in his or her will, a "pretermitted" spouse or child may still be able to receive some of the decedent's estate assets. A spouse is considered "pretermitted" if the decedent made a will, and then years later married his or her spouse but never made another will to devise assets to that spouse. Similarly, a child is considered "pretermitted" if the decedent made a will, and then years later had a child but never made another will to devise assets to that child.

Thus, if your client is a pretermitted spouse or child, you should consider whether he or she still has a legal claim to a portion of the decedent's estate assets. See 20 PA. C.S. § 2507(3)-(4).