

An overview of the general workings of ideal probate registries vis-a-vis the com...

[Business](#)



The Probate Registries are efficient channels of dispensing justice in matters of testamentary instruments such as wills or estates. The Probate Registries have daunting challenges that needs to be addressed expediently, ranging from administrative problems, incessant delays, perversion of justice et al. This paper expounds the general workings of ideal probate registries vis-a-vis a comparative analysis of probate registries within common law jurisdictions with their peculiarities.

Also, special recommendations would be proffered in a bid to structural revamp the Probate Registries in Nigerian Courts. A. WHAT IS PROBATE?

Probate is the legal process of administering the estate of a deceased person by resolving all claims and distributing the deceased person's property under the valid will. A surrogate court decides the validity of a testator's will.

Probate is the official sanction of the Court upon a testamentary instrument (e. g.

Will) so as to authorise an executor to administer the Estate as personal representative of the deceased. Although a Grant of Probate is a grant by the Court, in ordinary non-contentious matters where no doubt is cast upon the validity of the Will, the matter does not usually come before the Court but is disposed of by the Registrar who merely requires a number of formal affidavits . A probate interprets the instructions of the deceased, decides the executor as the personal representative of the estate, and adjudicates the interests of heirs and other parties who may have claims against the estate.

1 It may be seen as the legal process of settling the estate of a deceased person and distributing the deceased's assets (not just property) under their

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Will or in accordance with the rules of intestacy if there is no Will. This may frequently involve selling a house or a flat so that the proceeds can be distributed to the beneficiaries. B.

HISTORY OF PROBATE COURTS Although individual cases involving wills, decedents' estates, trusts, guardianships, and conservatorships—traditionally, matters within the jurisdiction of courts exercising probate jurisdiction— have garnered considerable public and professional attention, relatively little is known about the administration, operation, and performance of courts with probate jurisdiction. Unlike other types of courts (e. g. , criminal courts), the evolution of such courts has differed considerably from state to state. In England, probate court jurisdiction began in the separate ecclesiastical courts and the courts of chancery.

The early probate courts in America exercised equity jurisdiction. Modern counterparts of these equity courts are chancery, surrogate, and orphan's courts. In other American jurisdictions, a judge within a court of broader jurisdiction would typically be given responsibility for probate cases (usually in addition to other duties) because of that judge's expertise or interest in the area or to expedite the handling of this group of cases. Over time, this caseload became sufficiently large to 1 2 Probate, Wikipedia. com Probate Registry, www.

williamsturges. co. uk necessitate the assignment of full-time probate judges or the establishment of a separate probate court in some jurisdictions. This evolution, however, occurred differently in every state, and even within

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different jurisdictions within a given state. As a result, there is considerable variation between (and often within) the various states in the way in which the state courts handle probate matters.

From the early 13th century until the Court of Probate Act 1857 and the establishment of a civil court, the Principal Probate Registry, which started functioning on 10 July 1858, jurisdiction over wills and testamentary matters was held by the church, with the exception of the period of the interregnum when a national civil court was established from 1653 to 1660. The wills proved in this latter court are filed with the Prerogative Court of Canterbury series at the National Archives. It was unusual to write your will yourself, and before 1837 up to a third of wills were spoken (noncupative wills), most commonly by those close to death who were too ill to write. Others were spoken by people who could not read or write. Where a written will was prepared it might reflect the onset of illness, the prospect of a hazardous journey or the outbreak of plague nearby! A pregnant woman, especially if recently widowed, would also be likely to ensure she had made a will.

If the testator died without leaving a will, or did not appoint an executor, Letters of Administration (Admons) might be given, prior to a Grant of Administration being established. Records for Administrations are often slim and not as interesting as wills. Up to 1782 it was obligatory for every executor or administrator to return into the registry of the court an inventory of the deceased's goods. Therefore an appraiser or executor compiled the inventory, or in some cases, the widow. After this date an inventory might be

called for by an interested party, but it was no longer an automatic part of common form procedure.

All existing probate jurisdictions were abolished by the Court of Probate Act of 25 August 1857 which came into force on 11 January 1858. This Act of Parliament established a Principal Probate Registry and 40 District Probate Registries for England and Wales. Enquiries about wills proved and administrations granted after 11 January 1858 may be seen at the Principal Probate Registry. C. REASONS FOR A PROBATE REGISTRY Probate is the judicial process for transferring the property of a person who has died (called a decedent).

The property is transferred according to either the decedent's Will, or if the decedent died without a Will. The Probate Court appoints legally qualified persons, called personal representatives, to manage and settle the decedent's business affairs. Personal representatives pass the deceased person's estate property, real and personal, to the rightful recipients. Rightful recipients might include heirs, devisees named in a valid and current will, or creditors. D.

OPENING A PROBATE CASE Estate papers (called pleadings), the original Will, if any, and proper payment are presented together to the Court for review and appointment of the personal representative and/or probate of the Will, if any. The initial Application and Acceptance must be signed by the applicant in the presence of a notary 3 Commission on National Probate Court Standards and Advisory Committee on Interstate Guardianships, ' National

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Probate Court Standards', http://www.probatect.org/ohioprobatecourts/pdf/national_probate_standards.pdf public prior to

submission to the Court.

An original Death Certificate should also be submitted for the Court's review. Applicants must submit complete, accurate, and truthful pleadings to the Court, either in person or by mail (use certified mail if an original will is being submitted). Each pleading is presented in order with exact copies clipped behind the original. Usually one to three copies are presented with each pleading filed throughout the case. The Court keeps the original and returns endorsed copies to the filing party.

Once the Judge signs the Order appointing the Personal Representative, the Court issues Letters Testamentary (in cases where the decedent left a valid will) or Letters of Administration (in cases where the decedent did not leave a valid will). These Letters give the Personal Representative legal authority to conduct the decedent's estate business. E. JURISDICTION OF THE PROBATE COURT State law limits the jurisdiction of the Probate Courts to: admitting Wills to informal probate; appointing personal representatives informally (without a hearing); appointing Special Administrators for estates and issuing Certificates of Full Administration of the estate. In addition to handling informal probate cases, the Probate Court provides general information on process (how to file), record (what is on file, title searches, will, and genealogy searches) and information about court history.

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Judicial admission of mentally retarded persons. Guardianship for developmentally disabled. Criminal matters that come before a probate court includes but not limited to proceedings relative to interstate extradition of adults. 2. ROLES OF A PROBATE REGISTRY The probate registry's role is to screen applications in accordance with legislation, policy and procedures, practice directives and Rules of Court. The Probate Registry is responsible for making sure that an applicant is entitled to be given a grant and that any will that they produce has been properly made and signed.

If there is any doubt as to whether the will left by the deceased is valid or if it appears the will has been altered or amended in any way. Then they may wish to interview one of the witnesses. Once the grant has been issued the responsibility of The Probate Registry ends. They will not be able to assist you in dealing with the administration of the estate after that. Other roles are; ? ? ? ? ? ? ? ? ? ? Grants of Probate. Grants of Letters of Administration.

Grants of Letters of Administration with Will Annexed; and Resealing of Grants or Ancillary Grants. Assessing Court filing fees payable. Receiving and recording Caveats and Citations pursuant to the Rules of Court. Preparing and issuing Grants for estate applications that have been approved.

Referring for hearing in chambers all estate applications that the Registrar is unable or unwilling to approve and process. Conducting searches for issued Grants of representation.

Ensuring that all procedures required by the Court before a Grant of representation is issued are followed. Preparing and issuing Grants once

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applications have been checked and approved. 3. OFFICERS OF THE PROBATE REGISTRY AND THEIR DUTIES A. PROBATE JUDGE: The duties of a probate judge includes; Intestate A probate judge's duties also vary depending on whether the deceased person died intestate (without a will) or testate (with a will) and whether they are contested or not in either case.

If someone dies and has a considerable estate but no will, a probate judge will be involved in assigning a personal representative to handle the business of the estate. If the parties agree on who this should be, then the judge will assign the person officially to administer the estate. If the beneficiaries have disagreements about who should be the personal representative and the distribution of the assets, then the probate judge will assign a representative to the case. The judge also oversees the distribution of assets along the way. A probate judge's duties include clearing titles to stocks, bonds and land.

If large amounts of money are left in banks in the name of the deceased party, the probate judge will see that these are placed in the rightful beneficiary's names. If the parties inheriting estate assets are congenial, probate duties go smoothly. 5 Identification The first and most important duty of a probate judge is to confirm that an individual qualifies for probate, that is, that she is legally deceased, and to examine any wills submitted on her behalf. The word " probate," in fact, is based on the Latin root meaning " to prove. " The primary task of the probate court is to prove the validity of an initial probate filing and the legal wills submitted for administration.

Depending on the laws of the state, disappeared persons who have not been located after a considerable period of time can have their estate probated as if deceased. Features Several different factors go into determining the validity of a will, such as the date of its execution, whether it was handwritten or typed, and how it was witnessed. Further complications arise if the will has been amended, if previous wills exist, or if the decedent was divorced subsequent to the making of the last will. Many states invalidate existing wills upon divorce or marriage, but allow for older wills to be enforceable in part if they do not conflict with the most recent will. Some provisions of a valid will could be deemed unenforceable. Establishing the precise terms to be enforced is an important role of the probate judge.

Types Not everyone dies with a valid will. These estates are called intestate, and are governed by the state's laws of intestacy. And, whether an estate is testate or intestate, it can also be either contested, meaning there is significant controversy among the heirs, or uncontested. The probate judge will have a heightened role in a contested estate, where there is a greater probability of various challenges to the will and objections to the actions of the personal representative. Function Appointing and supervising the personal representative is the next major function of the probate judge, once the probate estate has been opened and the terms of the will (or relevant laws of intestacy) have been determined.

If there is a valid will, the personal representative will usually be named in the will, and that individual has a strong likelihood of being appointed by the court. If there is no will, or the named representative is unavailable or

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unwilling, the probate judge has the responsibility of naming a representative. This can either be a person nominated by an interested party to the estate (beneficiary or creditor) or a professional trustee or attorney. The personal representative accepts a fiduciary duty to the beneficiaries, and determining whether he has breached this duty is another responsibility of the probate Duties of a Probate Judge, http://www.ehow.com/about_5082374_duties-probatejudge.html#ixzz14Jari5NM

judge. Considerations In addition to administering an estate, probate judges in different jurisdictions have various other duties. The probate judge can issue orders related to property of a probate estate, such as the opening of safe deposit boxes. The judge's office can issue certificates of survivorship, and must regulate the court's schedule in a way that maintains the integrity of each individual case. In some states, probate judges have some family law responsibilities, such as appointing guardians for children, approving name changes, and issuing marriage licenses.

Testate If someone dies, leaves a will and has named a personal representative and beneficiaries who contest the choices of the deceased, then the probate judge gets involved.

The judge's duties will include settling all disputes about distribution of assets, challenges to the validity of the will, as well as problems with the personal representative. At the Hearing Each state has its own approach to processes, but the general duties for probate judges are the same as those described in the sections above. The cost of a case in probate court varies by state, but is typically around 3 to 7 percent of the estate's value. B.

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PROBATE REFEREES The probate referee's duties are functionally similar to that of the probate judge. A probate judge will assign cases for the referee to hear and the referee will make recommendations for rulings.

If the parties agree to the decision of the referee, the matter will be routinely approved by the judge. If an objection is made, the judge will handle it.

Probate referees are attorneys, usually with five years or more of experience, who have passed the court's screening process to be appointed as a referee. The appointment will be for a limited time, such as a year or two, but may be renewed. In California for instance, the probate referee serves solely as an appraiser of the estate property, such as promissory notes, art, intellectual property, real estate and a going business. In other states, the referee is given the power to administer oaths and take acknowledgments in legal matters.

By law, the California Comptroller appoints the probate referees in each county. The probate judges typically assign referees to probate cases by picking the next referee on the approved list. A probate referee must meet certain educational and work experience standards, as well as pass a written exam. Referees are usually attorneys, certified public accountants or professional appraisers. **C. EXECUTORS OR ADMINISTRATORS** The executor plays the key role in the probate proceedings from the very beginning.

After residency and bond issues are reviewed, and the court officially appoints him or her as the executor, it is up to him or her to collect and inventory the assets of the estate, pay all debts and expenses of the estate,

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and then distribute property to the beneficiaries and establish any trusts, if directed by the Will. It will be the executor's responsibility to notify heirs, beneficiaries and creditors, obtain a federal identification number for tax purposes, and open a checking account in the name of the estate. The executor must review all records to determine all of the assets of your estate, and physically take custody of all assets which are subject to probate. After taking custody, the executor must determine the fair market value of the estate property, pay any debts still outstanding, resolve any claims by creditors, and pay the costs of all expenses incurred in administering the estate. The executor may have to sell some of the estate's assets to pay debts and expenses.

The executor is also responsible for preparing and filing death tax returns. This can include the federal estate tax return and the state inheritance and estate tax returns. He or she will also be responsible for filing your final individual income tax return, the estate income tax returns, and any necessary gift tax returns. It is also the responsibility of the executor to distribute the remaining estate assets to the beneficiaries, and to establish and fund any trusts specified in the Will. This is a responsibility which requires careful management.

If one is in any doubt about the process or ability to carry out these onerous duties it is most advisable to engage the services of an experienced attorney or other professional. The duties of an executor or administrator include collecting the assets, and arranging for their safe-keeping or investment before distribution. In certain cases they may require to be sold. The Estate

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representative is also responsible for identifying and paying all debts and taxes owing, and the distributing the assets or their proceeds to the beneficiaries in accordance with the will or their legal entitlement. The process may take quite a long time especially where there are beneficiaries who are still minors and the assets must be prudently managed before eventual distribution. If the house is straightforward then the Personal Representatives (this term includes both Executors and Administrators) can provide the valuation without seeking professional assistance.

The Personal Representatives should take all reasonable steps to put a correct value on the property. In addition, the Land Registry website will also show the recent sale prices of houses in the vicinity. Account should be taken of the state of repair of the house as this may reduce the value. At the same time, account must also be taken of features, such as a large garden or potential access to other land potentially suitable for development that might make the property attractive to a builder or a developer. If the Personal Representatives arrive at a range of values for the house then it is best practice to adopt a valuation somewhere in the middle of the range.

Whatever the value they calculate they will need to be able to justify it if asked by the District Valuer. If a professional executor has been appointed they are entitled to make a charge for the work involved. The charges made by different firms vary enormously. Banks typically charge 4% of the estate. Solicitors typically charge 2% of the estate; if you would prefer to deal with estate yourself then you are entitled to ask a professional executor to renounce. However you cannot force them to do so.

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The only way to remove an executor is to make an application to The High Court. This is prohibitively expensive. D. SURVEYOR With the problems in the housing market continuing, the Personal Representatives may want to consider instructing a Chartered Surveyor to give a professional probate valuation. The reason for this is to ensure that in current markets the house is not overvalued as this will result in an additional and unnecessary inheritance tax liability.

This makes the responsibility of surveyors crucial in a viable probate registry. E. GUARDIAN A guardian is a person who has the legal right and duty to take care of a minor or a minor's property. Guardianship results either by virtue of the role as parent of the minor or appointment by a Probate Court or other Court of competent jurisdiction. This right and duty includes the obligation of care and control of that minor and/or his property and the authority to make major decisions affecting the minor's welfare.

In some states, guardianship also refers to persons who manage the estate or person of an adult. 4. PROBATE COURT PERSONNEL AND THEIR RESPONSIBILITIES⁶ In an ideal probate court, a judge or commissioner is assigned to handle probate cases. Each probate court has a court investigator. However, in some other places, the judge, assisted by a clerk, may hear probate cases.

In larger jurisdictions, the probate court operates on a full-time basis and includes a number of departments and judges, and the judges have more staff to help them. The staff may include experienced probate lawyers who

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work for the court or probate examiners. These persons examine papers filed and advise the judge and the parties filing the papers of any problems with them or with the notices of hearing concerning them that has been given. They also keep track of parties' failures to file required papers in a timely manner and assist the court in compelling compliance with the court's rules and the laws applicable to probate matters. The court personnel includes;

COURT CLERK The clerk's office is responsible for filing and storing all papers sent to the court by the parties to lawsuits and other matters heard in the court, and all orders made by the court's judges. In the larger jurisdictions like in the United States, the clerk's office has a probate division responsible for maintaining the records of matters heard in the probate court.

The clerk keeps files that are records of each court case, including each conservatorship. All of the papers that are filed in a conservatorship are put in its case file, maintained under its file number. One must refer to that number and the case's name when one calls or writes the clerk's office. Any document one files must also contain the file number and the case name.

COURT INVESTIGATOR Every superior court has at least one court investigator. The court investigator serves as the judge's "eyes and ears" in that the investigator is allowed to contact the conservatee or other interested people outside the courtroom.

The court investigator is sometimes called the probate investigator. In most cases, a court investigator must personally visit the proposed conservatee before the conservator is appointed. The investigator explains the conservatorship, answers questions, sees whether the proposed conservatee

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has any objections, and recommends whether a lawyer should be appointed to represent the proposed conservatee. 5. MATTERS THAT CAN BE CONSIDERED IN A PROBATE COURT Examples of matters to arise in a probate case include, but are not limited to: > Legally changing title to real property owned by the decedent to name of the new owner(s) > Legally changing title to personal property, such as bank accounts, stocks, bonds, etc. > Paying creditors > Filing decedent's income taxes and estate taxes, if necessary.

6 The Role of A Probate Court 6. FUNCTIONS OF A PROBATE REGISTRY ?

Personnel functions such as maintenance of personnel records, hiring and firing decision, staff evaluations, promotions, disciplinary records, and training programs. ? Financial duties such as oversight of court budget, with Finance, Treasurer and Clerk: accounts payable, receivable and purchasing, Revenue maintenance and enhancement. ? Guardianship Investigations ? Caseflow Management - Responsible for the technical integrity of all cases before the court like docket control; attorney appointments; notice requirements; filing of petitions; file creation and maintenance; record control; courtroom coordination; recording; transcripts; juror needs ? Deposit of wills. ? Appointment of appraisers.

? County Election Commission ? Delivery of election results on election night.

? Vacancy in county offices; filling. ? Vacancy in register of deeds. ?

Appointment of the State Boundary Commission. ? Reorganization of school districts. Soldiers' Relief Commission; appointment; removal.

? County Tax Allocation Board; selection. ? Special county drain commissioner. ? Issuance of a marriage license without publicity; marriage of persons under marriageable age. ? Person authorized to solemnize marriages. ? Notary Public.

? Bond for railway surveys. 7. COMPARATIVE ANALYSIS OF THE STRUCTURAL FRAMEWORK OF PROBATE REGISTRIES IN SEVERAL COMMON LAW JURISDICTIONS A) COMMONWEALTH COUNTRIES In England and Wales, Northern Ireland, Commonwealth countries (common law jurisdictions), Ireland and in the U. S. probate is obtained by executors of a will while Letters of Administration are granted where there are no executors.

When someone dies, the term “ Probate” usually refers to the legal process whereby the deceased’s assets are collected together and, following various legal and fiscal steps and processes, eventually distributed to the beneficiaries of the estate. Technically the term “ Probate” has a particular legal meaning but it is generally used within the English legal profession as a term to cover all procedures concerned with the administration of a deceased person’s estate. As a legal discipline the subject is vast and it is only possible in an article such as this to cover the most common situations, but even that only scratches the surface. All legal procedures concerned with Probate (as defined above) come within the jurisdiction of the Family Division of the High Court of Justice by virtue of Section 25. 7 The High Court is therefore the only body that is able to issue the documents which give persons the ability to actually deal with a deceased person’s estate, such as to enable them to close bank accounts or sell property or shares.

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It is the production and issuing of these documents, known collectively as “Grants of Representation” that is the primary function of the Probate Registries, which are part of the High Court, and are to whom the general public and probate professionals alike apply to for the Grants of Representation. 8 There are many different types of Grants of Representation, each one designed to cover a particular circumstance. The most common ones are those which cover the two most common situations – either the deceased died leaving a valid Will or they did not. If someone left a valid Will then it is more than likely that the Grant will be a “Grant of Probate”. If there was no Will then the Grant required is likely to be a “Grant of Administration”. There are many other Grants which can be required in certain circumstances and many have strange Latin names but the general public is most likely to encounter these two – the Grant of Probate and the Grant of Administration.

The general public can apply to a local probate registry for a Grant themselves but most people use a probate practitioner such as a solicitor. If an estate is small some banks and building societies will allow accounts to be closed by the deceased’s immediate family without a Grant, but there usually needs to be less than about ? 15, 000 in the account for them to allow this. ANALYSIS OF THE WORKINGS OF PROBATE REGISTRIES IN ENGLAND AND WALES GETTING PROBATE When a person dies, somebody has to deal with their estate (the money, property and possessions left) by: collecting all the money, paying any debts, and sharing out the estate between those entitled to it. The probate registry sends out a legal

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document called a grant of representation that allows one or more people to deal with the estate. This is often called getting probate.

- WHO DOES PROBATE? The deceased's Will appoints executors who are responsible for calling in the assets and distributing them. The executors will not be able to deal with the assets until such time as a Grant of Probate has been obtained. This is issued by the Probate Court and confirms that the executors have authority to deal with the deceased's estate. In the majority of cases executors will appoint solicitors to act on their behalf. Where a person dies without leaving a Will their estate is dealt with under the rules of intestacy. Rather than there being a Grant of Probate there are Letters of Administration and the court appoints administrators instead of executors.

9 HOW IS A GRANT OF PROBATE OBTAINED Before the Grant of Probate can be obtained a return must be submitted to HM Revenue and Customs confirming the amount of inheritance tax payable. The return gives details of the deceased's assets at 7 8Senior Courts Act 1981 Probate, Wikipedia. com 9 The Probate Service, *ibid.* the date of death, this includes details of any real property. The solicitor completing the return must give the property's value.

Once the Revenue has confirmed that it is happy with the Return an application is made to the Probate Court for the Grant of Probate. 10

PROBATE VALUATION For the purposes of Probate the property's value is based upon the open market value of the property in a sale by a willing seller to a willing buyer (section 160 Inheritance Act 1984). Any peculiarities of the

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property (for example the fact that there is a buyer desperate for a flat in that particular building and willing therefore to pay a premium) must be ignored. Often a number of estate agents will be approached to provide this figure and the average value is given in the return. 11 QUERYING THE VALUATION Once the return has been submitted, the District Valuer at the Capital Taxes Office will consider the valuation given. If they believe that the value is too low the person who submitted the return will be asked to defend the value given.

The solicitor acting will turn to the estate agent and ask them to justify their valuation directly to the District Valuer. This situation may arise, for example, if the property is sold for considerably more than the value given in the return just a short period after the date of death. It is quite rare for the District Valuer to question the valuation given, but it does happen.

Conversely, if, within 4 years of the date of death, the property is sold for less than the value given a claim can be made to the Revenue for a refund of the tax paid. SELLING THE PROPERTY Often the property needs to be sold. However the sale cannot be completed until the Grant of Probate has been issued as it is only at this point that the executors have title to sell.

This is frequently something that is not understood by the executors or beneficiaries who instruct the estate agents and is not made clear to the potential buyers. It can take many months, even years, to obtain the Grant and so a buyer may not wish to hang around - very frustrating for all involved. It is however possible for contracts to be exchanged before the Grant of Probate has been obtained. This is because the executors would be

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held to be protecting the deceased's estate. In this case the contract needs to be carefully drafted to state that completion will only take place once the Grant has been issued, with perhaps a long stop date so that the buyer does have a chance to walk away if the Grant is not forthcoming.

NB not all buyers (and their solicitors!) are prepared to proceed on this basis. It is important to note that where there is no Will the administrators cannot do anything with the assets, even market the property, before the Letters of Administration have been issued. It should be made clear to the buyer that they are going to be buying a property from executors who will probably not have lived at the property and have no detailed knowledge. In fact they may be able to give no information at all. The buyer must be prepared for this.

The executors are entitled to sell the property with limited title guarantee and there will be a statement in the Transfer Deed that they are only liable for the information that they provide in respect of the period since the date of death of the deceased. According to the Leasehold Reform, Housing and Urban Development Act 1993 (as amended), it is possible for the executors to serve a Notice of Claim to extend a lease in accordance with the 1993 Act. They are entitled to do so within a period of 2 years from the date of the Grant of Probate, but only if the deceased had owned the property for 2 years and all other qualifications have been met. This means 10 11 Ibid. Ibid.

that executors would be able to market a property for sale with the benefit of a Notice of Claim which could then be assigned to the buyer. This would

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avoid the buyer having to wait 2 years before extending the lease themselves, and of course increases the marketability of the property. B) UNITED STATES In any of the jurisdictions in the U. S. that recognize a married couple's property as tenancy by the entireties, if a person dies intestate, the portion of his/her estate so titled passes to a surviving spouse without a probate.

If the estate is not automatically devised to the surviving spouse in this manner or through a joint tenancy, and is not held within a trust, it is necessary to " probate the estate", whether or not the decedent had a valid will. A court having jurisdiction of the decedent's estate (a probate court) supervises probate, to administer the disposition of the decedent's property according to the law of the jurisdiction and the decedent's intent as manifested in his testamentary instrument. There are exceptions for smaller estates. If the decedent died without a will, known as intestacy, the estate will be distributed according to the laws of the state where the decedent resided or held by the court. 2 If the decedent died with a will, the will usually names an executor (personal representative), a person tasked with carrying out the instructions laid out in the will. The executor marshals the decedent's assets.

If there is no will, or if the will does not name an executor, the probate court can appoint one. Traditionally, the representative of an intestate estate is called an administrator. If the decedent died with a will, but only a copy of the will can be located, many states will allow the copy to be probated, subject to the rebuttable presumption that the testator destroyed the will

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before death. In some cases, where the person named as executor cannot administer the probate, or wishes to have someone else do so, another person will be named as administrator. An executor or an administrator may receive compensation for his service.

The probate court may require that the executor provide a fidelity bond, an insurance policy in favor of the estate to protect against possible abuse by the executor. The representative of a testate estate who is someone other than the executor named in the will is an administrator with the will annexed, or administrator. The generic term for executors or administrators is personal representative. STEPS OF PROBATE Some of the decedent's property may never enter probate because it passes to another person contractually, such as the death proceeds of an insurance policy insuring the decedent or bank or retirement account that names a beneficiary or is owned as "payable on death", and property (sometimes a bank or brokerage account) legally held as "jointly owned with right of survivorship". Property held in a revocable or irrevocable trust created during the grantor's lifetime also avoids probate.

In these cases in the U. S. no court action is involved and the property is distributed privately, subject to estate taxes. 13 After opening the probate case with the court, the personal representative inventories and collects the decedent's property. Next, he pays any debts and taxes, including estate tax in the United States, if the estate is taxable at the federal or state level, or the Pennsylvania inheritance tax. Finally, he distributes the remaining

property to the beneficiaries, either as instructed in the will, or under the intestacy laws of the state.

2 13 Intestacy Laws of Florida Source: Wikipedia. com A party may challenge any aspect of the probate administration, such as a direct challenge to the validity of the will, known as a will contest, 14 a challenge to the status of the person serving as personal representative, a challenge as to the identity of the heirs, and a challenge to whether the personal representative is properly administering the estate. Issues of paternity can be disputed among the potential heirs in intestate estates, especially with the advent of inexpensive DNA profiling techniques. In some situations, however, even biological heirs can be denied their inheritance rights, while nonbiological heirs can be granted inheritance rights. The personal representative must understand and abide by the fiduciary duties, such as a duty to keep money in interest bearing account and to treat all beneficiaries equally. Not complying with the fiduciary duties may allow interested persons to petition for the removal of the personal representative and hold the personal representative liable for any harm to the estate.

JURISDICTION AND PROCEDURE OF PROBATE COURTS IN THE UNITED

STATES The jurisdiction of the probate courts in the U. S varies depending on the laws of the respective states. However, there is an obvious uniformity in the workings of the Probate Registries. Particularly, Chapter 210115 provides expressly for the Probate Court, its jurisdiction and Procedures: ? To take the proof of wills and to admit to record authenticated copies of wills executed, proved, and allowed in the courts of any other state, territory, or country. If

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the probate judge is unavoidably absent, any judge of the court of common pleas may take proof of wills and approve bonds to be given, but the record of these acts shall be preserved in the usual records of the probate court. To grant and revoke letters testamentary and of administration; To direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates; To appoint the attorney general to serve as the administrator of an estate pursuant to section 2113.

6 of the Revised Code; To appoint and remove guardians, conservators, and testamentary trustees, direct and control their conduct, and settle their accounts; To grant marriage licenses; To make inquests respecting persons who are so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that they are unable to manage their property and affairs effectively, subject to guardianship; To qualify assignees, appoint and qualify trustees and commissioners of insolvents, control their conduct, and settle their accounts; To authorize the sale of lands, equitable estates, or interests in lands or equitable estates, and the assignments of inchoate dower in such cases of sale, on petition by executors, administrators, and guardians; To authorize the completion of real estate contracts on petition of executors and administrators; To construe wills; To render declaratory judgments, including, but not limited to, those rendered pursuant to section 2107. 84 of the Revised Code; To direct and control the conduct of fiduciaries and settle their accounts; To authorize the sale or lease of any estate created by will if the estate is held in trust, on petition by the trustee; ? ? ? ? ? ? ? ? ? ? ? ?

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14 15 Will Contests in Florida. Ohio Revised

Code. ? ? ? ? ? ? ? ? ? ? ? ? ? ? ? ? To terminate a testamentary trust in any case in which a court of equity may do so; To hear and determine actions to contest the validity of wills; To make a determination of the presumption of death of missing persons and to adjudicate the property rights and obligations of all parties affected by the presumption; To hear and determine an action commenced pursuant to section 3107. 1 of the Revised Code to obtain the release of information pertaining to the birth name of the adopted person and the identity of the adopted person's biological parents and biological siblings; To act for and issue orders regarding wards pursuant to section 2111.

50 of the Revised Code; To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court; To hear and determine actions involving informed consent for medication of persons hospitalized pursuant to section 5122. 141 or 5122. 15 of the Revised Code; To hear and determine actions relating to durable powers of attorney for health care as described in division (D) of section 1337. 6 of the Revised Code; To hear and determine actions commenced by objecting individuals, in accordance with section 2133. 05 of the Revised Code; To hear and determine complaints that pertain to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment in connection with certain patients allegedly in a terminal condition or in a permanently unconscious state pursuant to division (E) of section 2133.

08 of the Revised Code, in accordance with that division; To hear and determine applications that pertain to the withholding or withdrawal of nutrition and hydration from certain patients allegedly in a permanently unconscious state pursuant to section 2133. 9 of the Revised Code, in accordance with that section; To hear and determine applications of attending physicians in accordance with division (B) of section 2133. 15 of the Revised Code; To hear and determine actions relative to the use or continuation of comfort care in connection with certain principals under durable powers of attorney for health care, declarants under declarations, or patients in accordance with division (E) of either section 1337. 16 or 2133. 12 of the Revised Code; To hear and determine applications for an order relieving an estate from administration under section 2113. 03 of the Revised Code; To hear and determine applications for an order granting a summary release from administration under section 2113.

31 of the Revised Code; To hear and determine actions relating to the exercise of the right of disposition, in accordance with section 2108. 90 of the Revised Code; To hear and determine actions relating to the disinterment and re-interment of human remains under section 517. 23 of the Revised Code

AVOIDING PROBATE - Probate generally lasts several months, and often over a year before all the property is distributed, and incurs substantial court and attorney costs. One of the many ways to avoid probate is to execute a living trust. A settlor, or a creator of a trust, transfers ownership of his real property from himself to a trust which he controls and can revise (except in the case of an irrevocable trust. Upon death, the

persons named as beneficiaries in the trust acquire ownership of the property of the trust.

Since a probate is a public process, a living trust shields private affairs of the deceased and the heirs from public scrutiny and helps the estate avoid estate tax. Probate can also be avoided by setting up P. O. D (paid on death) designations on bank accounts and T. O. D (transfer on death) on brokerage accounts, 401ks and IRAs that pass automatically to designated beneficiaries.

As for real estate, a testator must add a named beneficiary to a deed by executing a life estate deed. The property can be passed several generations. The key to avoiding probate is having named beneficiaries on all assets, as is the case for life insurance. A common error in life insurance is naming the insured's estate as the contingent beneficiary. Doing so will place the proceeds from that policy into probate.

Life insurance, savings accounts, and joint tenancies with the right of survivorship are testamentary substitutes to avoid probate. A Segregated fund is a specific type of investment vehicle that is held inside a life insurance company. While segregated funds are not life insurance policies, and thus do not have a death benefit, they can be valuable substitutes for mutual funds held at a bank or other financial institution, due to the ability within them to designate a beneficiary, and thus bypass the estate, and probate. Avoiding probate does not eliminate estate taxes. Under the federal estate tax law as modified, included in the definition of a taxable estate are

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property held in a living trust, life insurance, payable on death or transfer on death financial instruments, and other property a party receives upon decease of the decedent.

C) PROBATE REGISTRY IN AUSTRALIA The Probate Registry is the Registry of the Court that deals with applications for grants of probate or administration and other related matters. The Probate Registry keeps a register of probates and administrations granted by the Court. On application for a grant the Court determines what document or documents constitute the last will of the deceased and / or who is entitled to be the personal representative of the deceased (i. e. the executor or administrator).

When these determinations have been made a grant is issued in respect of the estate of the deceased person. 16 The Supreme Court of South Australia is the Court that has exclusive jurisdiction in this State to make orders in relation to the validity of a will of a deceased person, the appointment of an executor or an administrator and the administration of a deceased estate. There are three types of grants under the common law jurisdiction of Australia - probate, letters of administration with the will annexed and letters of administration. When necessary a grant will be limited in duration, in respect of property or to any special purpose. The term 'grant' is used to mean whatever type of grant is issued.

A grant is the official recognition by the Court of the right of the personal representative named in the grant to administer the estate of a deceased person and of the vesting in the personal representative of the title to the

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The probate court should promptly implement changes in law and procedure affecting court operations. The practices of the probate court should faithfully adhere to relevant laws, procedural rules, and established policies. The probate court should give individual attention to cases, deciding them without undue disparity among like proceedings and upon legally relevant evidence. Decisions of the probate court should address the issues presented with clarity and specify how compliance can be achieved. The probate court should be responsible for the enforcement of its orders.

Records of all relevant probate court decisions and proceedings should be accurately maintained and securely preserved. A probate court should maintain its institutional integrity and observe the principle of comity in its governmental relations. The probate court should make efficient, effective, and economic use of its resources. The probate court should use fair employment practices. The probate court should develop procedures to inform the community of its proceedings. The probate court should adjust its operations to anticipate new conditions or emergent events.

The probate court and its justice should be perceived as accessible to the public. The probate court should inspire trust and confidence that its functions are conducted expeditiously and fairly and that the court's decisions have integrity. The probate court should be perceived to be independent, accountable, and free from influence by other components of government. The jurisdiction of a probate court should be unlimited within those areas conferred upon it by common law, by statute, or by constitutional principles. Its jurisdiction should be established as a

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The probate court should regularly monitor and evaluate its management information system. The probate court should acquire and utilize new technologies and equipment to assist the court in performing its work effectively, efficiently, and economically. The probate court should collect and review caseload statistics including the volume, nature, and disposition of proceedings. The court should establish procedures to maintain the confidentiality of sensitive personal information or information required to be kept confidential as a matter of law. The probate court should refer appropriate cases for mediation and should encourage the parties to seek mediation.

The probate court should refer appropriate cases for mediation and should encourage the parties to seek mediation. The probate court should encourage arbitration of disputed issues. The court should enforce arbitration provisions in instruments such as wills and trusts. The probate court should ensure that timely and reasonable notice is given to all persons interested in court proceedings. The elements of notice (content, delivery, timing, and recipients) should be tailored to the situation. The probate court should appoint as fiduciaries only those persons who are: (1) competent to serve, (2) aware of and understand the duties of the office, and (3) capable of performing adequately. A fiduciary nominated by a decedent should be appointed by the court absent disqualifying circumstances.

The court should require a surety bond or other asset protection arrangement of a fiduciary when (1) an interested person makes a meritorious demand, (2) there is an express requirement for a bond in the

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will or trust, or (3) the court determines that a bond is necessary. The court should ensure that the amount is reasonably related to the unprotected assets of the estate. The probate court should allow virtual representation where appropriate. The probate court should not seal probate records, or any parts thereof, without a full explanation of the reasons for its order. The probate court should encourage and utilize interstate compacts to exchange relevant information among courts to ensure that when parties leave the original jurisdiction, probate matters are properly handled. When required, the probate court should carefully review settlements before authorizing a personal representative or conservator to bind the estate.

The probate court should determine heirship in an intestate estate only after proper notice has been given to all potential heirs and reliable evidence has been presented. 9. CONCLUSION Having given a clear comparative analysis of Probate Registries within several common law jurisdictions vis-a-vis their respective structural frameworks and procedures, the recommendations proffered are not in any way exhaustive but would go a long way in ensuring an effective Probate Registry Administration within the Nigerian Judicial System.