

Section 21 - Real and Personal Property - Independent Administration

21.10 Real Property

21.10.1 Taking Charge

21.10.1(a) Duty of Personal Representative

Unless the will provides otherwise, the independent personal representative shall take possession or control of the decedent's property. However, any real (or tangible personal) property may be surrendered to persons entitled thereto unless or until the independent personal representative finds it necessary to take possession for purposes of administration.

21.10.1(b) Management, Protection, Preservation

The independent personal representative shall pay taxes on the property in his possession and take all steps reasonably necessary for its management, protection and preservation.

References: §§ 473.803, 473.810

21.10.1(c) Specific Devise

Expenditures on specifically devised property must be deducted from the property or share of the distributees entitled to the property.

21.10.2 Sale of Real Property

21.10.2(a) Sale by Personal Representative

The independent personal representative may sell any real property of the estate. The independent personal representative may not include the proceeds of the sale of real estate as part of his statutory compensation unless the real estate is sold pursuant to court order. If a court order to sell is desired, the independent personal representative may obtain an order by obtaining consents of interested persons. If statutory grounds exist for the sale, then a court order may be obtained by setting the application for hearing with notice to interested persons. Section 20.10.3 is applicable if a statutory sale is sought.

References: Form 10368, Form 10470, Form 10472, Form 10475, Form 10477, Form 10482
§ 473.810(16)

21.10.2(b) Sale by Heirs or Devisees

If real property is sold by the heirs or devisees, the schedule of distribution or final decree of distribution must still distribute the real property to the heirs or devisees entitled thereto. See Section 20.10.3(b) in regard to a sale by heirs or devisees in a supervised administration.

Practice Tip: Merely recording the statement of account is insufficient to pass marketable title. The independent personal representative needs to record an independent personal representative's deed or a decree of distribution, if one is entered, plus a certified copy of the will, if any. It is not the Probate Division's responsibility to record any instrument.

Reference: § 473.844

21.10.3 Other Applicable Sections

Generally, the following sections also apply to the sale of real property in an independent administration:

20.10.2	Discovery of Assets
20.10.3	Grounds for or Consents to Sale
20.10.6	Purchase Price - Private Sale
20.10.7	Terms of Private Sale
20.10.8	Suggested Practice Aids
20.10.9	Reporting Real Property Sales on Settlement
20.10.10	Abandonment of Real Property
20.10.11	Foreclosure

21.20 Personal Property

21.20.1 Values of Property

Section 20.20.1 applies in its entirety.

21.20.2 Possession

Unless the will provides otherwise, the independent personal representative shall take possession or control of all of the decedent's property. However, any tangible personal property may be surrendered to persons entitled thereto unless or until the independent personal representative finds it necessary to take possession for purposes of administration.

Reference: § 473.803

21.20.3 Management, Protection, Preservation

The independent personal representative shall take all steps reasonably necessary for the management, protection and preservation of the real and personal property.

References: §§ 473.803, 473.810

21.20.4 Discovery of Assets

Section 20.20.3 applies in its entirety.

Reference: § 473.340

21.20.5 Sales

The independent personal representative may sell any personal property of the estate without court order.

See Section 22.120 for the manner in which to reflect a sale on the settlement or statement of account.

Reference: § 473.810(16)

21.20.6 Abandonment

Generally, the Court wants to ensure that all distributees of the estate are not interested in receiving the property proposed to be abandoned before a court order for abandonment will issue.

Property may be abandoned, upon court order, when it is so encumbered as to be a burden to the estate, or when it is of no value and distribution would be burdensome.

The petition for abandonment must be set for hearing with notice of hearing to interested persons or be accompanied by consents of all interested persons.

Practice Tip: Identify property to be abandoned and show as credit against inventory on final settlement or statement of account. If no objections are filed within 20 days and after the settlement or statement of account has been reviewed by the auditor and exceptions cleared, if any, the Court will take no action respecting the property; and the settlement or statement of account will be considered approved as to such abandonment.

21.20.7 Secured Property

The personal representative may want to obtain a court order before allowing personal property to be taken in satisfaction of a pledge or other lien. See also § 443.300. The Court may determine instead that assets of the estate will be used to preserve the property depending upon the type of property, the condition of the estate and the distributees entitled thereto. The independent personal representative must obtain the consent of interested persons to the application or it must be set for hearing with notice to interested persons.

21.20.8 Expenses Associated with Delivery of Specifically Devised Property

Section 20.20.7 applies in its entirety.

21.20.9 Continuation of Decedent's Business

Section 473.810(17) provides the circumstances under and time in which the independent personal representative may continue the decedent's business. If a court order is necessary to continue the business for an additional period of time the independent personal representative must obtain the consent of interested persons or set the matter for hearing with notice to interested persons.

In determining whether or not an order to continue the business will issue, the Court will consider the factors set forth in the following sections:

- 20.20.3 Discovery of Assets
- 20.20.8(b) Financial Information Required
- 20.20.8(d) Confidential Financial Information
- 20.20.8(e) Solvency of Estate
- 20.20.8(i) Segregation of Business Assets
- 20.20.8(j) Limitations on Operations

Reference: § 473.810(17)

[END OF SECTION]