Continuing Legal Education Course

PROBATE CLE TRAINING - RESOLVING TITLE ISSUES TO KEEP CLIENTS IN THEIR HOMES

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Trainers:

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P Michael Jones, Esq., Staff Attorney, Philadelphia VIP

Philadelphia VIP presents this CLE training in partnership with the Probate and Trust Law Section.

PHILADELPHIA BAR ASSOCIATION

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About Philadelphia VIP

Mission Statement: VIP promotes equal justice for the poor by providing civil legal services not otherwise available collaborating with other legal services organizations and promoting a culture of volunteerism by educating and exposing attorneys and law students to issues of poverty.

Philadelphia VIP is the hub of pro bono legal services in Philadelphia. For the past thirty-four years, we have provided legal services for low-income residents and families facing civil legal problems that threaten their basic human needs – shelter, employment, financial stability, education and health.

VIP, through its volunteers and staff, serves more than 3,500 individuals and families yearly who could not afford attorneys and whose cases could or would not be handled by other public interest organizations. We are the agency of last resort for the majority of our clients.

Our clients are among the poorest in the City and region and their numbers are growing.1 To be eligible for our services a client's income must be at or below 200% of the federal poverty guidelines. Thus, our most financially secure clients earn approximately $22,000, while a family of 4 lives on $44,000.

VIP serves a multi-lingual population, principally Spanish speaking, but increasingly we see clients who speak Russian, Creole (Haitians), Chinese, 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. Our caseload has four priority areas:

- Maintaining family income (child support, employment/wage claims, tax issues, disability)
- Preventing homelessness (mortgage foreclosure, landlord/tenant appeals, public housing evictions, probate, tangled title, consumer debt, litigation defense)
- Supporting family stability (child custody, adoption/guardianship, special education and school discipline, name change and immigration issues); 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.

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.

Trainers

Brian R. Gilboy, Gilboy & Gilboy, is licensed to practice in Pennsylvania and New Jersey state courts and the Eastern District of Pennsylvania and New Jersey federal courts. He has been named a *Superlawyers* Rising Star in the field of Trust and Estates and a Top Attorney – Pennsylvania's Outstanding Young Lawyers for all years from 2013 through 2017.
Brian's practice is centered upon providing estate and trust planning advice with a focus on tax mitigation, family dynamics and asset protection. Such planning frequently includes business succession, GST issues, grantor trust issues and retirement plan assets and their particular income tax treatment among many other areas.

Brian also has significant experience in trust termination and modification in and out of Orphans' Court and has filed dozens of Court Accountings and Petitions throughout his career and is often looked to by corporate trustees for representation.

Brian is the current co-chair of the Tax Committee and member of the Executive Committee of the Probate and Trust Law Section of the Philadelphia Bar Association. Brian is also a member of the Philadelphia Estate Planning Council and the Young Lawyer's Division of the Probate and Trust Law Section of the Philadelphia Bar Association.

Brian is an active participant in the Philadelphia VIP pro bono program assisting low income clients with probate and tangled title issues and received recognition from the Philadelphia Court of Common Pleas for his pro bono work. Brian further participates in the Wills for Heroes program, assisting first responders with estate planning work without charge. Brian serves as a Court appointed guardian when called upon by the Philadelphia and Montgomery County Orphans' Courts.

Kelly J. Gastley, Managing Attorney, joined the VIP staff in September 2005 as an Independence Foundation Public Interest Law Fellow, working on our homeownership (tangled title) project. She then served as a staff attorney from 2007 to 2009 and a supervising attorney from 2009 to 2015.

Now in her role as managing attorney, Kelly oversees VIP's legal team, manages the flow of cases, and actively works to recruit and retain volunteer attorneys. She has expertise in probate, real estate litigation (quiet title actions), and real estate transactions. She has also worked on VIP's mortgage foreclosure project and landlord-tenant project. During her years at VIP, Kelly has led CLE trainings for volunteers, developed extensive training materials, and mentored volunteer attorneys. She has also done policy work on homeownership and real estate tax issues and led community education and outreach sessions.

Kelly received her B.A. in Sociology and Government from the College of William and Mary in Williamsburg, Virginia, in 2002, and her J.D. from the Marshall-Wythe William and Mary School of Law in 2005, where she was Executive Editor of the William and Mary Law Review and a member of the Public Service Fund.

P Michael (Mike) Jones, Staff Attorney, joined VIP in January 2018 as the Landlord-Tenant Housing Fellow and transitioned into the Homeownership Staff Attorney in May 2018. While studying at Duquesne University School of Law, Mike clerked for The Law Office of Steven Auerbach and The Community Justice Project. Mike fortuitously served as the Externship Student Manager at the Tribone Center for Clinical Legal Education, where he tracked and supported student externs in government, judicial, and public interest agencies. Mike was a volunteer legal fellow at the ACLU-PA before joining Philadelphia VIP and is currently an Executive Committee member of the Young Lawyers Division for the Philadelphia Bar Association. He enjoys exploring, contemplative beverages, and fiction.

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 not be able to read or understand the letter, 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 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 cooperation you will be unable to help him/her. 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. Our pool of volunteers is limited, however, so 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 VIP's Managing Attorney or Executive Director before incurring any expense.

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, call VIP and discuss the matter with the Managing Attorney or the Executive Director.

Q: What do I do when my case is finished?
A: You should write a letter to VIP stating the outcome of the case, estimating the number of hours you spent on the case, and indicating whether you are available to take another case.

Thank You for Volunteering!

TABLE OF CONTENTS

The Impact of Homeownership Issues on Clients and the Greater Philadelphia Community..... 6

Important Probate and Estate Administration Terms..... 8

Helpful Resources and Contact Information..... 10

Step 1: Compiling Pertinent Information on the Property and the Decedent 12

I. Information Pertaining to the Property 12

A. Basic Property Information..... 12

1. Documents Held by the Client..... 12

2. OPA Account Details..... 12

3. Deeds and Other Recorded Documents 12

B. Title Report 13

1. What is a Title Report? 16

2. Contents of a Title Report..... 16

3. What to Look for When Reviewing..... 16

4. Most VIP Clients Receive Title Subject to Existing Liens..... 17

5. How to Talk to Your Client About the Title Search..... 18

C. Delinquent Utility Charges and Real Estate Taxes..... 18

1. If Your Client's Property Has Delinquent Real Estate Taxes..... 19

a. Communicating with the City, Linebarger, and GRB..... 19

b. Handling a Case where Court Action has been Initiated by the Tax Collector .. 19

c. Registering a Notice of Interest with the City..... 19

D. Determining the Value of Clients' Homes..... 20

II. Information Pertaining to the Decedent..... 20

A. Family Information 20

B. Information on the Decedent's Estate..... 20

1. Determining If an Estate Has Already Been Opened for the Decedent..... 20

2. Gathering Other Information on the Decedent's Estate..... 21

a. Wills 21

b. Intestacy Law 21

c. Assets other than the Real Property 22

C. The Decedent's Death Certificate..... 23

1. If the Decedent Died Before 1906 23

2. If the Decedent Died During or After 1906 23

a. Contact the Funeral Home..... 23

b. Making a Request through the Mail..... 24

c. Making a Request in Person 24
d. Making a Request Through a Fax Machine 25
e. Making a Request Online 25
3. If Uncertain as to Whether Someone Is Deceased or Unsure of Date of Death 25
Step 2: Providing Notification of the Decedent's Death to the Department of Human Services 27
I. Notifying DHS That an Estate May Be Subject to Recovery 27
II. DHS's Statement of Claim 28
A. Applying for a Hardship Waiver 28
1. Formal Undue Hardship Waivers 28
2. Other Hardship Waiver Requests 30
B. What to Do When a Request for a Hardship Waiver Has Been Denied 32
Step 3: Determining Whether the Client's Homeownership Problem Should Be Resolved 33
I. Assessing the Advantages and Disadvantages 33
II. Dealing with Objecting Heirs 34
III. An Important Note about Open Mortgages on the Property 35
Step 4: Applying to the Tangled Title Fund 36
I. About the Tangled Title Fund 36
II. Client Eligibility for Receipt of Tangled Title Funds 36
III. The Application Process 37
A. Submitting a Complete Application 37
B. Costs That the Tangled Title Fund Covers 37
C. The Approval Process 37
IV. The Disbursement Process 38
Step 5: Choosing an Approach to Transferring Title – Probate Versus § 3546 Petition 39
Step 5, Option 1: Probate and Estate Administration 42
I. Defining Probate 42
II. Personal Representatives 42
A. Determining Who the Personal Representative of the Estate Will Be 42
B. A Warning for Potential Personal Representatives 43
III. Initiating Probate 44
A. Time Limits for Probate 44
B. Filing a Petition for Probate and Grant of Letters 44
1. Commencing the Process Through Electronic Filing 44
2. Completing the Process at the Register of Wills' Office 45
C. The Granting of Letters 47
IV. Estate Administration 48

A. Duties of the Personal Representative 48
1. Notice to Heirs 48
2. Advertising 48
a. Deciding Whether to Advertise 49
b. If You and Your Client Decide to Advertise 49
3. Inventory 50
4. Inheritance Tax Return 50
5. Income Tax Returns 50
a. Federal Income Tax Return Requirements 50
b. Pennsylvania Income Tax Return Requirements 50
6. Debts of the Decedent and the Family Exemption 51
7. Distribution of Assets 51
a. Distribution of Real Property 52
b. Distribution of Other Property 52
8. Filing of a Final Status Report and Closing the Estate 53
B. Preparing and Recording a Deed for Transfer of the Decedent's Property 53
1. Considering Whether to Obtain Title Insurance 53
2. If You and Your Client Decide to Obtain Title Insurance 54
3. If You and Your Client Decide Not to Obtain Title Insurance 55
4. Preparing the Deed and Accompanying Documents 55
a. Preparing the Deed 55
b. Completing the Transfer Tax Forms 56
c. Payment of and Exclusion from Transfer Tax 56
d. Completing an Attorney Affidavit 58
5. Recording the Deed and Accompanying Documents 58
Step 5, Option 2: An Alternative to Probate – § 3546 Petition for Determination of Title 60
I. An Introduction 60
II. Locating Parties Before Filing a § 3546 Petition for Determination of Title 62
A. Parties with Known, Accurate Addresses 62
B. Parties with Possible Addresses 62
C. Parties with Unknown Addresses 62
III. Filing a § 3546 Petition for Determination of Title 63
A. Required Contents of a § 3546 Petition 63
B. *Filing* a *Lis Pendens* 64
C. Praecipe to Proceed *In Forma Pauperis* (IFP) 65
D. Electronic Filing of § 3546 Petitions 65

1. The Orphans' Court Electronic Filing System (OCEFS) 65
2. Tips on E-filing 66
E. Service of Notice 67
1. Notice to by First-Class Mail to Parties with a Valid Last Known Address 68
2. Notice to Parties Without a Valid Last Known Address 68
a. Filing a Motion for Alternative Service 68
b. Effectuating Service Pursuant to a Court's Order for Alternative Service 69
3. Service of Notice by Publication 70
4. Service of Notice by Posting 70
5. Service of Notice by Other Means the Court Deems Appropriate 70
IV. Completion of a Successful § 3546 Petition 70
A. Granting the Order 71
B. Recording the Decree and Deed of Confirmation with the Recorder of Deeds 71
1. Considering Whether to Obtain Title Insurance 71
2. If You and Your Client Decide to Obtain Title Insurance 72
3. If You and Your Client Decide Not to Obtain Title Insurance 72
4. Preparing the Deed of Confirmation and Accompanying Documents 72
a. Preparing the Deed of Confirmation 73
b. Completing the Transfer Tax Forms 73
c. Payment of and Exclusion from Transfer Tax 74
d. Completing an Attorney Affidavit 75
5. Recording the Deed and Accompanying Documents 75
6. Recording a Praecipe to Remove a *Lis Pendens* 76
C. Filing an Inheritance Tax Return 76
Step 6: Pennsylvania Inheritance Tax Returns 77
I. Filing Requirements 78
II. Preparing an Inheritance Tax Return 78
A. Taxable Assets 78
B. Non-taxable Assets 79
C. Deductions and Exemptions 79
D. Inheritance Tax Rates 80
E. Calculating the Amount of Tax Owe d 80
III. Submitting the Return and Paying What Is Owed 81
A. Collecting Funds to Pay for the Tax 81
B. Filing the Return and Submitting Payment 81
C. Requesting An Abatement on Principal, and Wavier of Interest and Penalties 82

D. Payment Plans 83
Step 7: Dealing with Utility Charges and Real Estate Taxes 83
I. Delinquent Utility Charges 83
II. Delinquent and Current Real Estate Taxes 84
A. The Consequences of Delinquent Real Estate Taxes 84
B. The Parties Involved with Tax Collection in Philadelphia 84
C. VIP Clients Should be Eligible for Owner Occupied Payment Agreements (OOPA) for Delinquent Real Estate Taxes 84
D. Protocol for Handling Cases with Active Real Estate Tax Litigation 85
1. How to Contact the Tax Collector 85
2. Whom to Contact at the Tax Collector 86
F. Assisting Your Client in Paying Current Real Estate Taxes 87
Step 8: Helping Your Client Avoid Future Homeownership Problems 87
I. Educating Your Client 87
II. Information on Basic Estate Planning 88
A. Defining Estate Planning 88
B. The Importance of Estate Planning 88
C. The Fundamentals of Estate Planning for Clients 89
1. Life Planning Documents 89
a. Powers of Attorney 89
b. Advance Directives 89
2. How Various Types of Property Pass upon Death 89
3. Planning for the Transfer of Assets at Death Through Wills 90
a. The Benefits of Wills 90
b. Making and Executing a Will 90
c. Elective Rights of a Surviving Spouse Against a Will 91
d. Rights of Pretermitted Spouses and Children 91

APPENDIX

This training guide and the complete Appendix 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 know 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, Homeless Advocacy Project, 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 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 meets 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.

Administrator or Administratrix	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.
Agent	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.
Beneficiary	A person named in a will, trust, life insurance policy, retirement plan, etc., to receive all or a portion of another's property.
Bequest	A gift of money or personal property made in a will.
Codicil	An amendment to a will.
Decedent	The person who has died.
Devise	A gift of real property made in a will.
Estate (gross)	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.
Executor or Executrix	A person named in a will who is responsible for settling the estate and carrying out the provisions of the will.
Guardian	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.

Heir	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.
Intestacy	Distribution of property according to state law that comes into effect when a person dies without a will. (Note that "intestacy" does *not* result in the decedent's property automatically going to the Commonwealth if the decedent dies without a will.)
Non-probate Property	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).
Personal Representative	The modern label for a person serving as Executor, Executrix, Administrator, or Administratrix of a decedent's estate.
Principal	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.
Probate Property	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.
Testator or Testatrix	A person who has made a will.
Trust	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**, http://www.peph.com -- 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.

- **Pennsylvania Consolidated Statues, including Title 20, Probate, Estates, and Fiduciaries (PEF) Code**, http://government.westlaw.com/linkedslice/default.asp?SP=pac-1000 -- 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**, http://www.pacourts.us/assets/opinions/Supreme/out/682spct-attach.pdf?cb=1?cb http://www.courts.phila.gov/pdf/rules/Compiled-Orphans-Court-Rules-Forms.pdf -- These are the state and local rules that apply to actions filed in Orphans' Court in Philadelphia.

- **Dan Evans'** ***Pennsylvania Estate and Trust Cybrary***, http://evans-legal.com/dan/welcome.html -- 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.

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	(215) 686-6250 http://www.phila.gov/wills
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 ocsupport@courts.phila.gov – for e-filing support http://courts.phila.gov/common-pleas/orphans/
Pennsylvania Department of Revenue, Philadelphia Inheritance Tax Unit	110 North 8th Street, Suite 204A Philadelphia, PA, 19107	(215) 560-2056

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/ Click the "Homeownership" link to access 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 Walnut Street, Suite 400, Philadelphia, PA, 19102, (215) 523-9550, fax (215) 564-0845. The following are staff members at VIP whom you may also contact directly:

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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 opa.phila.gov and clicking on "Property Search.

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

A few weeks 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 Appendix 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 a 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 may be 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 Appendix 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.)

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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 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, it is very important that you promptly send a letter to the City Law Department. 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.

As a result, you **must** contact the City to alert them 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. (See Appendix 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. (See Appendix for the language of this statute.) 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 and § 3546 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 Appendix 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 § 3546 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 or through a § 3546 petition).

In order to determine if an estate has been opened, you should contact the Register of Wills, at (215) 686-6261, 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, the estate file should 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 http://www.peph.com/, for more information on probating a copy of a will.)

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 Appendix or 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 Appendix or 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 Appendix or 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 <u>child</u> or <u>sibling</u> of the decedent dies before or after the decedent:

- *If a child or sibling of the decedent <u>predeceases</u> 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 <u>dies after</u> 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 other 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 either probate or a § 3546 Petition, 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 or filing a § 3546 Petition should meet this standard.

1. If the Decedent Died Before 1906

If the decedent died before 1906, a copy of his or her death certificate can be obtained from Philadelphia County Birth and Death Records, City Archives, 3101 Market Street, Philadelphia, PA 19104, (215) 685-9402, archives@phila.gov.

2. If the Decedent Died During or After 1906

If the decedent died during or after 1906, a copy of his or her 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 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 social security number, his/her parents' names, 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 Appendix 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 http://www.health.pa.gov/MyRecords/Certificates/Pages/11596.aspx#public 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 Through a Fax Machine

With your assistance, the client should complete the appropriate form. (See Appendix for the fax request form.)

With your assistance, the client should then fax the completed form to the Division of Vital Records at (724) 652-8951. The fax should also include 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.

- Note that the client will have to write his or her credit card information on the form as payment. 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.

e. Making a Request Online

With your assistance, the client should complete the appropriate form online at

http://www.health.pa.gov/MyRecords/Certificates/Documents/death_certificate_application_11-2017.pdf

- 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: go.fold3.com/ssdi
- FamilySearch: familysearch.org
- Free People Search: https://www.familytreenow.com/
- Philly.com: search obituaries
- PA Death Records from 1906 to 1965: www.phmc.pa.gov/Archives/Research/Online/Pages/Death-Indices.aspx#.Vx9t8vkrIdV

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)[1] 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 their website, at www.phmc.pa.gov/Archives/Research-Online/Pages/Death-Indices.aspx#.Vx9t8vkrIdV

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.)

(See Appendix 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.

[1] In 2013 the PA Department of Public Welfare was renamed the Department of Human Services.

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.

- *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 or the Appendix.)

- *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 Appendix 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*

- 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 Appendix), 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 Appendix 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.

- 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*, 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 immediately prior to admission to the nursing facility

- *if the decedent received Medicaid-funded home- and community-based waiver 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 for at least two years while the decedent was receiving home- and community-based services

- a completed and notarized No Alternative Permanent Residence Affidavit

e. 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 Appendix), 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 Appendix 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 Appendix for information on determining the value of your client's home)

<u>If you are submitting this type of hardship waiver request, please contact VIP for a sample letter</u>.

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 Appendix 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 <u>if</u> 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, although expenses over $2,500 are not a priority.

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 tangledtitlefund.weebly.com).

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 VIP website for the most current application materials, available at tangledtitlefund.weebly.com.

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
- 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 downpayment 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 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 $2,500 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 VIP website, available at tangledtitlefund.weebly.com 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**
When Should This Option Be Used?	When: (1) both: (a) all of the decedent's heirs can be located, *and* (b) all of the decedent's heirs agree that the client should receive the property *or* (2) the client is the only heir to the property, by will or by intestacy law	When: (1) either: (a) the decedent died more than 1 year ago, and no letters have been granted on the decedent's estate, *or* (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 *and* (2) either: (a) there are missing heirs, *or* (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, *or* (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
Monetary	(1) $320 – base probate filing fee	(1) publication, depending on the Court's

Costs Involved	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 (2) average of $340 total – advertising of estate notice, *if the attorney and client choose to advertise*, once a week for 3 weeks, in both a legal paper and a paper of general circulation (3) inheritance tax (4) transfer tax *only if* there are any heirs giving their interest in the property to client who do not qualify for an exempt transfer	Decree: (a) *minimum*, average of $505 – once in both a legal paper and a paper of general circulation (b) *maximum*, average of $1,515 – once a week for 3 weeks, in both a legal paper and a paper of general circulation (2) inheritance tax (3) transfer tax *only if* there are any heirs giving their interest in the property to client who do not qualify for an exempt transfer
Potential Length of Proceeding	(1) It takes at least **10 business days** in order for the Register of Wills to grant a Petition for Letters. (2) Once Letters are issued, the personal representative and all of the heirs can **immediately** 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), (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.	(1) The Petition must be drafted, and appropriate documentation/exhibits must be compiled. (2) Once the Petition is filed, the Court must review it, which can take **several weeks**. (3) Assuming that the Court issues a Decree *Nisi*, notice must then be given by mail and publication. (4) Next, a **3-month waiting period** begins once notice by mail and publication occurs. (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.
Advantages of This Option	(1) *Speed* – 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	(1) *Necessary if there are missing, uncooperative, and/or deceased heirs* – 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.

	debts that the decedent may have had. (2) *Can potentially clear some of the decedent's debts* – 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.	(2) *Avoiding probate* – 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. (3) *Clears some of the decedent's debts* – 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.

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.

STEP 5, OPTION 1: 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 or the Appendix for a complete list of individuals who can initiate probate.) Generally, the Register of Wills will grant letters to persons in the following order:

- persons named in the will as residuary beneficiaries
- the surviving spouse
- 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 Appendix for a sample renunciation form.)
- principal creditors of the decedent at the time of death
- other fit persons
- if any of the above decline their right, then a nominee of the above
- 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 Appendix 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 taken into account 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) or the Appendix.) However, you must file a petition in order to probate an estate when the decedent died more than 21 years ago. (See 20 Pa. C.S. § 3152 or the Appendix. See also the Appendix for a sample petition.)

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 or the Appendix.) 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 at http://secureprod.phila.gov/wills/lawyerlogin.aspx. 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:

- the decedent's death certificate
- 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, available at http://www.peph.com/, for more information on probating a copy of a will.)

- 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 Appendix 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 Appendix 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 within two weeks of e-filing the petition, as the petition expires.

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, available at http://www.peph.com/, for more information on probating a copy of a will.)

- 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 Appendix 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 at http://secureprod.phila.gov/wills/fees.aspx

  - There is an additional charge of $10 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.

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 Appendix 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 Appendix 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 or the Appendix.) 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. (See Appendix 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. (See Appendix 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 Appendix 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 $11,200,000 as of January 1, 2019. 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 (2018), available at http://www.irs.gov/publications/p17/ch01.html#en_US_2010_publink1000170392. Table 1-1.2018 provides summary of the gross income amounts that require the filing of a federal tax return. 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, available at:

https://www.revenue.pa.gov/FormsandPublications/FormsforIndividuals/PIT/Documents/dfo-02.pdf . 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 or the Appendix.)

- 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. (See Appendix.) Pennsylvania Supreme Court Orphans' Court Rule 12.1 and Philadelphia Orphans' Court Rules 12.1.A-C (available at http://evans-legal.com/dan/paocrule.html and http://courts.phila.gov/pdf/rules/strules2.pdf) 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 or the Appendix.)

- *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 $5,000,000 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 Appendix.) 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 Appendix.) 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 Appendix.) 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 Appendix.) 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 Appendix.)

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 Appendix 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 Appendix 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 Appendix 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 Appendix 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 Appendix 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 Appendix 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 1.01, effective June 2018. **Changes in the CLRF typically occur every July 1**. The numbers can be found on PA Revenue's website: https://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/RTT/Documents/clr_factor_current.pdf .
  - 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 as 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
        - Grandparent and great-grandchild

- *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." (See Appendix.) 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, or the Appendix, 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), or the Appendix, 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".

d. Completing an Attorney Affidavit

Effective November 3, 2008, attorneys must now submit a notarized Affidavit in order to record a deed without the Department of Records having to run a possibly time-consuming "deed name match." (See Appendix or https://www.phillyvip.org/resources/?_sft_resource-category=probate in our Resource Toolbox, for a type-in version.)

City Council Bill No. 080424-A recently amended Title 2 of the Philadelphia Code by creating new requirements for all deed documents submitted for recording. (See Philadelphia Code ch. 2-200 (2008).) The new ordinance requires the Department of Records to perform a "name match" of the grantor's name on the new deed and the grantee's name on the prior deed, which can be time-consuming if the last recorded deed has not been electronically indexed. However, the ordinance exempts the Department from having to run a name match if an attorney or title company submits the deed for recording. Thus, the Department of Records now requires attorneys and title companies to submit an Affidavit affirming their status and the validity of the new deed, so that they can be exempt from the name-match process.

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

- a notarized Attorney Affidavit

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 5, OPTION 2: AN ALTERNATIVE TO PROBATE – § 3546 PETITION FOR DETERMINATION OF TITLE

I. An Introduction

The Pennsylvania Probate, Estates, and Fiduciaries ("PEF") Code, located at 20 PA. C.S., provides an alternative to probate for individuals trying to gain legal title to real property. Instead of seeking letters through the Register of Wills and undertaking the responsibility of administering an estate, a person who claims an interest in real estate through a decedent or a decedent's heir may petition the Orphans' Court to "determine title" to the real estate.

Specifically, § 3546 of the PEF Code allows an individual to file a petition for determination of title in cases involving real estate in either of the following situations:

- when more than one (1) year has passed since the decedent died, and the decedent's estate has not been raised; or

- when six (6) or more years have passed since the decedent's death; an estate has been raised; the personal representative has not filed an accounting; *and* the petitioner was not the personal representative of the estate.

(See Appendix.)

In filing a § 3546 Petition, the Petitioner must explain in the petition how he or she acquired his or her legal interest in the property from the deceased record owner of the property (e.g., by will or intestacy law). In some cases, the client's claim to the property is through multiple relatives (and thus successive estates). This may occur, for instance, if the client's grandmother is the record owner of the property, the client's mother is the grandmother's only heir, and the client is an heir of her mother. In such a case, if both the grandmother and mother have died and if neither of their estates has ever been raised, the client can just file a § 3546 Petition for Determination of Title to the grandmother's property.

Act 79 of 2016, effective January 1, 2017, made several significant changes to the § 3546 process. Under the prior version of the law, a Petition and accompanying documentation were filed. Then a Decree *Nisi* was entered, advertised, and finalized merely through the passage of time. Once the Decree *Nisi* is final, title to the property could be transferred into the client's name by execution of a Deed.

Changes to the law eliminated the Decree *Nisi* and has created more substantial and specific notice requirements, which will be discussed in detail below. Most significant is that notice of the petition must be advertised three times in a newspaper of general circulation and three times in a legal newspaper. The tradeoff for the more stringent notice requirements is an explicit statement in the law permitting the judiciary to enter an Order terminating interests in real property. For some, the prior law was vague on a judge's authority to terminate property rights.

A Note on the Use of § 3390 and § 3546 Petitions for Clients Who Have Entered into Installment Land Contracts

VIP often receives referrals for clients who have entered into installment land contracts, commonly known as lease/purchase or rent-to-own agreements. In a typical installment land contract, the buyer and seller agree to a sale of real estate whereby the buyer makes periodic payments (usually monthly) toward a total purchase price and, once that purchase price is paid in full, the seller then conveys legal title of the property to the buyer.

Clients who have entered into such agreements, as buyers, typically come to VIP once the full purchase price has been paid because the seller has either disappeared or died or refuses to convey legal title to the client. Typically, a "quiet title" action is the appropriate action to bring on behalf of a client with an installment land contracts, which will force the seller to convey legal title.

However, if the seller died before he or she could convey legal title to the client or before the client could pay the full purchase price, a petition could instead be brought in Orphans' Court to get title to the property into the client's name. There are two types of Orphans' Court petitions that can effectuate this result: a § 3390 Petition for Specific Performance of a Contract or a § 3546 Petition for Determination of Title.

- A § 3390 Petition is most appropriate if the deceased seller's estate has been opened and is being administered by a Personal Representative, because § 3390 of the Pennsylvania Probate, Estates, and Fiduciaries ("PEF") Code (located at 20 PA. C.S.) allows a court to force a Personal Representative to honor an agreement made by the deceased to purchase or sell real property. (See Appendix.)

- However, because in a VIP case the seller's estate typically has not been opened by a Personal Representative, it is usually more appropriate to file a § 3546 Petition when the seller in an installment land contract has died. § 3546 of the PEF Code is broader than § 3390 and allows a person who claims an interest in real estate through a decedent to petition the court to "determine title" to the real estate, regardless of whether the deceased seller's estate has been opened.

Thus, where a seller in an installment land contract has died before the client could pay the full purchase price or before legal title was conveyed to the client, one of these petitions could be filed in lieu of pursuing a quiet title action if the circumstances so merit.

II. Locating Parties Before Filing a § 3546 Petition for Determination of Title

Before you file a § 3546 Petition, it is essential that you try to secure accurate addresses for all parties, including parties who are consenting to the Petition and missing heirs.

A. Parties with Known, Accurate Addresses

For any party for whom you and the client believe you already have an accurate address, you should send a brief letter to the party by first-class mail to ensure that it is a good address. The letter can simply state your intention to file a § 3546 Petition on the client's behalf in the near future and the purpose of filing the Petition. If the letter is not returned within 3-4 weeks, you should proceed with using that address for the party in the Petition.

B. Parties with Possible Addresses

For any party for whom you and the client have an address that may or may not be accurate, you should send a brief letter to the party by first-class mail and by certified mail, return receipt requested. The letter can simply state your intention to file a § 3546 Petition on the client's behalf in the near future and the purpose of filing the Petition.

If the first-class mail is not returned within 3-4 weeks and the certified mail receipt is returned as accepted, you should proceed with using that address for the party in the Petition.

If the first-class mail is not returned within 3-4 weeks but the certified mail receipt is returned as unclaimed, *or* if the first-class mail is returned, you should send a Freedom of Information Act (FOIA) request to the U.S. Postal Service regarding the party's address.

- If the FOIA response validates the party's address, you should proceed with using that address for the party in the Petition.

- If the FOIA response indicates that the address is no longer valid, you should engage in further efforts to try to locate the party. (See the section "Locating Parties Before Filing a § 3546 Petition for Determination of Title".)

C. Parties with Unknown Addresses

The sample § 3546 Petition outlines the steps you should take to try to locate a missing party (see sample § 3546 Petition, paragraph 11, in Appendix), including:

- discussing the party's whereabouts with other relatives
- sending a Freedom of Information Act (FOIA) request to the U.S. Postal Service regarding the party's last known address
- sending letters to the occupants of the properties that neighbor the last known residence of the party, requesting any contact information they have for the party
- speaking with the last known employer of the party, to request forwarding contact information for the party
- searching the internet for the party's name, making telephone calls and sending letters to any potential matches, within reason

- If these searches yield a small number of results, it is best to attempt contact with all of the potential matches via telephone and mail.
- If these searches yield a large number of results (e.g., 50 or 75 potential matches), it may not be possible to contact all of the potential matches via telephone and mail. In this case, you should note the volume of the potential matches in the § 3546 Petition.

If you gather some information on the missing party but still do not have a valid last known address, you should consider using a private investigator to try to locate the missing party:

- Private Investigator – This may be a good resource if you have some identifying information, such as date of birth or social security number, against which to reference possible matches and if a search on Accurint.com does not yield any helpful results.

VIP does not currently have a private investigator who can do this work for free. As a result, VIP recommends that volunteer attorneys ask an investigator that they regularly use in the course of business to donate either the investigator's time or pay for the service. Alternatively, volunteer attorneys or their law firms may elect to "donate" to VIP an amount equivalent to the investigator's charge for services, earmarked to pay for the investigator's services. VIP will, in turn, then use the donation to pay the investigator. Also, the Tangled Title Fund can pay for the cost of a private investigator under certain circumstances. **If you would like the Tangled Title Fund to cover this cost, you should request approval before the cost is expended.** (See "Step 4: Applying to the Tangled Title Fund".)

III. Filing a § 3546 Petition for Determination of Title

A. Required Contents of a § 3546 Petition

A § 3546 Petition details the client's claim to the property by explaining how the petitioner is claiming title to the property. (See Appendix for a sample petition.) The statute requires the property's parcel number be included in the petition. In Philadelphia, this number is the Office of Property Assessment (OPA) number for real estate tax purposes, and it may be found on the OPA website: property.phila.gov. The petition should include the following exhibits:

- *Last Recorded Deed* – A copy of the deed that put title of the property into the decedent's name must be included in the Petition. If you do not have a copy of the last recorded deed, you should contact a VIP staff member who can obtain a copy for you at no charge. (See the section "Helpful Resources and Contact Information" for our contact information.)

- *Death Certificate of the Deceased Record Owner* – If the client does not have a copy of the decedent's death certificate, he or she may be able to find one from a relative or from the funeral company in charge of the decedent's funeral. Alternatively, the client can order a copy of the death certificate if he or she is related to the decedent. (See above for information on ordering death certificates.) If, for some reason, it is impossible for the client to take these steps to obtain a copy of the death certificate, the reasons should be

detailed in the Petition submitted to the court, and any documentation that you do have regarding the decedent's date of death should be included.

- *Other Relevant Documents* – Any other documents that support the client's claim to the property, such as a will or an agreement of sale with the deceased record owner, should also be included.

- *Consent Forms* – All heirs who consent to the client's Petition and who do not wish to retain any interest in the property should sign a Consent form. (See Appendix for a sample Consent form and for a sample letter you can send to the other heirs requesting that they sign the Consent form.)

  It is advisable to file any and all Consent forms at the same time that the initial Petition is filed. In order to do this, you should finalize (but not file) the Petition and then send it and the Consent forms to the heirs, explaining that an exact copy of the Petition will be filed with the court shortly and requesting that they sign a Consent. You can then file the signed Consent forms along with the Petition.

  Consent forms can be filed after the initial Petition is filed, if necessary. However, it is advisable to file the consent forms as soon after filing the Petition as possible, because the court may deny the Petition if the consents do not follow within a few weeks of filing.

  - *Note*: You do not have to have consent forms from all of the decedent's heirs in order to file a § 3546 Petition. If an heir cannot be found, you must state in the Petition the efforts that you and the client have made to locate the heir. (See Appendix for a sample petition.)

    However, if an heir merely has not or will not sign a consent form, you should still proceed forward with filing the Petition *if* you and the client do not believe that the heir will file an objection to the Petition. The heir will have an opportunity to file a formal objection to the Petition once he or she receives notice of the Petition being filed.

  - *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.)

- *Proposed Order* – See Appendix for a sample Order

B. *FILING A LIS PENDENS*

The revised law, effective 1/1/2017, requires notice of *lis pendens* in the county where the property is located. A *lis pendens* can be recorded with the Department of Records when an action concerning title to real estate has been filed in court. Its purpose is to protect the client's

interest in real estate by putting third parties on notice that litigation pertaining to the real estate is pending and that your client has a right to the property. (See Appendix for a sample *lis pendens* to record.) Notice of filing the lis pendens should be included with your notice of petition when the notice can be sent via first-class mail.

- *Important Note*: **VIP can record the *lis pendens* for you for free**. You should send the document (a signed original) to our offices with a request for us to record it.

Once VIP has recorded the *lis pendens*, be sure to check that it shows of record. (If you do not have access to PhilaDox, the Department of Records' online index of recorded documents, you can ask a VIP staff member to check for you.) It is the duty of the person filing the document to ensure that it is recorded properly by the Department of Records.

C. PRAECIPE TO PROCEED *IN FORMA PAUPERIS* (IFP)

The filing fee for a § 3546 Petition is $40. **However, all volunteer attorneys should submit a 1- page *In Forma Pauperis* (IFP) Attorney Certification to the court**, requesting that this $40 filing fee be waived due to the client's limited financial resources. (See Appendix for a sample IFP Attorney Certification.) If asked, clients may indicate that they can come up with the fee even though they really cannot afford it, simply because they think they have to pay the fee in order to resolve their title problem. As a result, **it is important to file an IFP Attorney Certification in order to assist your client in preserving his or her limited financial resources for fees that cannot be waived, such as payments on delinquent real estate taxes or utility charges.**

Please note that, generally, neither VIP nor the Tangled Title Fund will reimburse volunteer attorneys or their firms for filing fees that can be waived by the filing of an IFP. (If, for some reason, the client's IFP is filed but denied by the Court, reimbursement can be sought.)

The court will review your IFP and issue an Order either granting or denying it. If you do not receive a copy of such an Order within a reasonable amount of time of filing it, you should check in with the Clerk of the Orphans' Court to determine the status of the IFP.

D. ELECTRONIC FILING OF § 3546 PETITIONS

1. The Orphans' Court Electronic Filing System (OCEFS)

All § 3546 Petitions (and all other Orphans' Court filings) must now be filed electronically. See the Philadelphia Courts home page at http://courts.phila.gov for a link to the Orphans' Court Electronic Filing System (OCEFS) (under "Online Services"). Before you can file the Petition electronically, you must apply for a user name through the e-filing website. (Note that the same username, password, and PIN are used for the Register of Wills' and Orphans' Court electronic filing systems.)

Once you have access to the e-filing system, you are able to file the Petition electronically. There is a User's Manual (on the Orphans' Court website) and a Tutorial (on the OCEFS website) available to guide you through the e-filing process. You may also contact the Orphans' Court Division at (215) 686-2230 with questions; they are very helpful in navigating

the e-filing system.

2. Tips on E-filing

VIP has found that the simplest way to e-file is to convert the Petition documents from Word or WordPerfect form into a PDF and to then submit the Petition electronically in PDF format. Exhibits can then be submitted either electronically (by scanning the exhibits and sending them as PDFs) or via fax. However, it is also possible to submit the Petition and accompanying exhibits via fax only.

Following are some practical tips on navigating OCEFS when filing a § 3546 Petition:

- The "Type of Pleading" depends on what type of document you are filing:
  - For the initial § 3546 Petition, you should select "Petition Filed."
  - For a Consent form being filed after the § 3546 Petition was already filed, you should select "Miscellaneous Entry."
  - For a Return of Notice (see Appendix), you should select "Proof of Service."
- If you submit exhibits via fax:
  - When you click the "Attach Using Fax Server" button on page 5 of OCEFS, the "Fax Serve Box" pops up. A green light automatically shows up under "Step 2," and time begins to run for you to fax your documents.
  - From here, you should print the transmittal form (which will act as a cover sheet) by clicking on the PDF link under "Step 1." Write the number of pages you are faxing on the transmittal form. (It is best to fax no more than 10 pages at a time, as the system usually times out if you try to fax more pages than that at once.)
  - Click "Re-Fax" at the bottom of the Fax Server Box, so that the time starts over again. Then immediately fax your exhibits, with the transmittal form as the first page.
  - Once your fax machine prints out a confirmation page, wait 1 minute and then click on the "Click Here" button under "Step 2." You can then click on a link to view your faxed documents, and click either "Accept," "Cancel," or "Re-Fax" at the bottom of the Fax Serve Box.
- *If you are e-filing a § 3546 Petition for which you are also submitting an IFP Attorney Certification*, you should:
  - (1) submit the IFP Attorney Certification as an attachment along with your other § 3546 documents;
  - (2) toward the end of the e-filing process, click the "walk in and pay over

the counter" option to file the petition and accompanying documents without paying any fees; *and*

(3) contact the Clerk of the Orphans' Court Division after e-filing to ensure that the Petition is properly processed and that the Clerk's office is not waiting on a filing fee to process the petition and accompanying documents.

- *If you are e-filing a document pertaining to the same § 3546 proceeding (e.g., a consent form) after filing the initial Petition,* the OCEFS is not currently capable of recognizing that you have already filed an IFP Attorney Certification and/or that the court has already issued an Order granting your client IFP status. As a result, when e-filing the subsequent document, you should:

  (1) submit a copy of the IFP Order (or, if the court has not issued an Order yet, then the IFP Attorney Certification) as an attachment;

  (2) toward the end of the e-filing process, click the "walk in and pay over the counter" option to file the document without paying a fee; *and*

  (3) contact the Clerk of the Orphans' Court Division after e-filing to ensure that the document is properly processed and that the Clerk's office is not waiting on a filing fee to process the document.

E. SERVICE OF NOTICE

Revisions to § 3546 effective 1/1/2017 created new requirements for service of notice of the petition and the parties that must be given notice.

Notice must be provided to:

(1) Known heirs;
(2) creditors without liens or record; and
(3) "all other persons and parties in interest reasonably known to hold or claim a lien, title, claim of other interest in the property".

NOTE: Creditors who do not have liens of record will not be on the title report. An example of a creditor who does not have a lien of record is a credit card company that the decedent owed money to but that has not sought a judgment against the decedent or the decedent's estate. In comparison, a creditor that has a lien of record is a mortgage company that has recorded a mortgage against the decedent's property or a creditor that has a judgment against the decedent issued by a court.

Also note item number (3) above is a new addition to the statute. VIP interprets this provision as pertaining to those who may have a legal interest in the property that is **not** of record. To investigate whether such parties exist, it is important to confirm with the client that no one has made claims to the property by mail or in person.

Notice must be given by:

(1) first-class mail to parties with last-known address;
(2) alternative service to parties without a valid last-known address, if any;
(3) posting;
(4) publication; and
(5) by other methods the court believes appropriate and necessary, if any.

1. Notice to by First-Class Mail to Parties with a Valid Last Known Address

All parties with a valid last known address must be sent a copy of the Petition, notice of the *lis pendens*, and a copy of the print-out screen from OCEFS that indicates that the Petition has been filed electronically. Orphans' Court service rules require the documents to be sent via first-class mail only; however, also sending notice certified mail, return receipt requested may serve as additional proof of notice should it be needed. (See Appendix for a sample letter noticing parties of the filed petition.)

NOTE: Heirs, known creditors who do not have liens of record (see explanation above), and other interested parties must be given notice of the § 3546 Petition being filed, *regardless* of whether they signed a Consent form.

Evidence of this notice should be filed along with the Petition. A Certificate of Service, signed by the client's attorney, is sufficient evidence of service by mail. (See Appendix for a sample certificate of service.)

2. Notice to Parties Without a Valid Last Known Address

a. Filing a Motion for Alternative Service

In order to serve all parties without a valid last known address, you will need to file a Motion for Alternative Service (also referred to as "special service"). (See Appendix for a sample motion.)

The motion should request (and the proposed Order that you submit along with the motion should also reflect) the type of service by which you would like to provide notice. Pennsylvania Rule of Civil Procedure 410(c) states that the court can direct one or more of the following methods of service when it grants a Motion for Alternative Service:

(1) publication of the notice, as provided by Rule 430(b);
(2) posting of notice on the property;
(3) sending the notice by registered mail to the party's last known address; *or*
(4) *another method the Court deems appropriate*

Given the 2017 changes to § 3546 require service of notice by publication and posting it is important that the prayer for relief in your Motion (as well as your proposed Order) note that service by publication and posting is required by statute. Request that the Court find these methods sufficient. As such, preparing the Motion for Alternative Service is a formality; it is a means to show the Court that you tried to locate missing heirs or parties of interest.

- *Important Note*: Be sure that the prayer for relief and proposed Order address service of not only original process (i.e., service of the § 3546 Petition) but also all subsequent pleadings. It is advisable to ask the court to allow you to serve subsequent pleadings by posting as well.

In addition to the actual motion, this filing should include the following documents and information:

- *Attorney's Affidavit in Support of the Motion* – Pennsylvania Rule of Civil Procedure 430 requires that this motion be accompanied by an Affidavit stating the nature and extent of the investigation that you and your client have made to try to determine the whereabouts of the defendant(s) and the reason(s) service cannot be made, so as to illustrate your good faith efforts to locate the defendant. (See Appendix for a sample affidavit.) The Official Note to Rule 430(a) states the following:

    - A sheriff's return of ''not found'' or the fact that a defendant has moved without leaving a new forwarding address is insufficient evidence of concealment. *Gonzales v. Polis*, 357 A.2d 580 (Pa. Super. 1976). Notice of intended adoption mailed to last known address requires a ''good faith effort'' to discover the correct address. *Adoption of Walker*, 360 A.2d 603 (Pa. 1976).
    - An illustration of a good faith effort to locate the defendant includes (1) inquiries of postal authorities including inquiries pursuant to the Freedom of Information Act, 39 C.F.R. Part 265, (2) inquiries of relatives, neighbors, friends, and employers of the defendant, (3) examinations of local telephone directories, courthouse records, voter registration records, local tax records, and motor vehicle records, and (4) a reasonable internet search.

- *Memorandum of Law in Support of the Motion* – This Memorandum of Law gives a very brief synopsis of the facts giving rise to the client's § 3546 Petition, the attempts to locate the missing parties, and the Pennsylvania Rule of Civil Procedure (430) under which the motion is being made. (See Appendix for a sample memorandum of law.)

- *Proposed Order* – This order should state the type of service by which you would like to provide notice. It should also address service of all subsequent pleadings. (See Appendix for a sample order.)

- *Stamped, Addressed Envelopes* – You must include stamped envelopes addressed to yourself, all counsel, and all unrepresented parties, so that the court can send a copy of its Order on the motion to all parties.

(See the section "Electronic Filing of § 3546 Petitions" on the court's mandatory electronic filing system.)

b. Effectuating Service Pursuant to a Court's Order for Alternative Service

If the court grants your request for alternative service, you should then file a Return of Notice with the court. (See Appendix for a sample Return of Notice. (See also the section "Electronic Filing of § 3546 Petitions" on the court's mandatory electronic filing system.))

3. Service of Notice by Publication

Publication of notice is mandatory by statute. Notice must be published three times in a newspaper of general circulation and three times in the *Legal Intelligencer*. Publication is quite costly; it averages about $500-$700 per printing for the typical § 3546 notice, depending on the length of the notice and the paper in which it appears. Because Tangled Title Fund fundimg varies yearly and the amount is capped per applicant, **it is imperative that you publish as short a notice as is legally sufficient**. (See Appendix for a sample notice.) It is also important to investigate the rates of advertising in various newspapers of general circulation. (See Appendix for contact information and rates for publication.)

- *Note*: The Philadelphia Court of Common Pleas, Orphans' Court Division, has, in the past, accepted the *Philadelphia Tribune* as a newspaper of general circulation. The expense of advertising in the *Tribune* is typically significantly less than advertising in the *Philadelphia Inquirer* or *Philadelphia Daily News*. However, it is best when approaching the issue of publication to investigate the rates of advertising in each paper, in order to minimize costs as much as possible.

While Tangled Title Funds are available to pay for such publication costs (see "Step 4: Applying to the Tangled Title Fund"), funds can only be disbursed if the Tangled Title Fund Advisory Committee finds that the attorney has made reasonable efforts to reduce the cost of publication as much as possible.

Once you have published the notice, you should file a Return of Notice with the court. (See Appendix for a sample Return of Notice. See also the section "Electronic Filing of § 3546 Petitions" on the court's mandatory electronic filing system.)

4. Service of Notice by Posting

The statute requires service of notice by posting at copy of the petition on the most public part of the property at issue. You should document that the property has been posted. A common method is to take a picture of the notice posted on the property with a newspaper with the day's date in view. You should then file a Return of Notice with the court. (See Appendix for a sample Return of Notice. (See also the section "Electronic Filing of § 3546 Petitions" on the court's mandatory electronic filing system.)

5. Service of Notice by Other Means the Court Deems Appropriate

Given the recent changes to § 3546, it has yet to be seen how and when the Court will apply this notice provision, if at all. If additional notice requirements are required in your case, do not hesitate to contact the staff at VIP. (See above for our contact information.)

Should you have any questions or concerns about publication of your client's § 3546 Petition, do not hesitate to contact the staff at VIP. (See above for our contact information.)

IV. Completion of a Successful § 3546 Petition

A. GRANTING THE ORDER

Once the § 3546 Petition *and* Certificates of Service and/or Returns of Notice have been filed, as applicable, the Court should issue an Order giving your client sole title to the property. The statute contains a provision for the Court to consider the report of a Master before issuing the Order. To date, VIP has not seen this need arise in one of its cases. If a Master's report is required in your case, please contact VIP for guidance. (Please see our contact information, above.) If you have not received a response from the Court within four weeks, you should contact the law clerk for the judge assigned to the petition to inquire into its status.

B. RECORDING THE DECREE AND DEED OF CONFIRMATION WITH THE RECORDER OF DEEDS

Once the Order is issued, a certified copy must be recorded along with a Deed of Confirmation. You should request a certified copy of the Order from the Clerk of the Orphans' Court, in Room 415 of City Hall. You should be able to obtain a certified copy in a few minutes. You should take the court's IFP Order with you, so that the usual fee charged for obtaining a certified copy is waived. It is also advisable to take a copy of the Order with you, for ease and convenience for the Clerk's office.

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 excepted from the policy, it may not be practical (or even possible) to obtain title insurance.

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.) **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 Appendix for a sample Deed of Confirmation. Note that you will need to prepare a Deed of Confirmation, 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 Appendix 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 of Confirmation 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 of Confirmation to transfer title of the decedent's property pursuant to the § 3546

action, the deed documents need to be prepared.

a. Preparing the Deed of Confirmation

The following points should be considered in preparing the Deed of Confirmation:

- See the Appendix for a sample Deed of Confirmation pursuant to a § 3546 Petition.

- As the sample Deed of Confirmation in the Appendix illustrates, the grantor *and* grantee of the deed should be listed as your client (and any other heirs who received title to the property through the § 3546 Petition, if applicable).

- 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 deed in the Appendix illustrates:

    - 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 Appendix 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.

- Any Consent forms signed by heirs should be attached to the Deed of Confirmation as exhibits. Technically, if the court's Decree mentions the heirs' consents, it is not necessary to attach the actual signed consent forms to the Deed, but it does not hurt to do so for clear chain-of-title purposes.

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."

- The "Grantor" and "Grantee" sections should both list the client's information, since the client is listed as the "grantor" and "grantee" in the body of the Deed of Confirmation.

- Include the tax parcel number (OPA 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.) Be sure to use the OPA's total assessed value, and not its market value.

- The Common Level Ratio Factor (CLRF) is now 1.01, effective June 2018. **Changes in the CLRF typically occur every July 1**. The numbers can be found on PA Revenue's website: https://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/RTT/Documents/clr_factor_current.pdf.

- 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.

- *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." (See Appendix.)

  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, or the Appendix, 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.)

- Philadelphia transfer tax is 3.1% 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".

d. Completing an Attorney Affidavit

Effective November 3, 2008, attorneys must now submit a notarized Affidavit in order to record a deed without the Department of Records having to run a possibly time-consuming "deed name match." (See Appendix or https://www.phillyvip.org/resources/?_sft_resource-category=probate in our Resource Toolbox for a type-in version.)

City Council Bill No. 080424-A recently amended Title 2 of the Philadelphia Code by creating new requirements for all deed documents submitted for recording. (See Philadelphia Code ch. 2-200 (2008).) The new ordinance requires the Department of Records to perform a "name match" of the grantor's name on the new deed and the grantee's name on the prior deed, which can be time-consuming if the last recorded deed has not been electronically indexed. However, the ordinance exempts the Department from having to run a name match if an attorney or title company submits the deed for recording. Thus, the Department of Records now requires attorneys and title companies to submit an Affidavit affirming their status and the validity of the new deed, so that they can be exempt from the name-match process.

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

- a certified copy of the Order (see the section "Recording the Decree and Deed of Confirmation with the Recorder of Deeds" for instructions on how to obtain a certified copy of the Decree)

- 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

- a notarized Attorney Affidavit

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 the 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.**

6. Recording a Praecipe to Remove a *Lis Pendens*

You must prepare and sign a Praecipe to Remove the *Lis Pendens*. (See Appendix for a sample.) You should then send the original signed Praecipe to VIP to be recorded with a waiver of the usual recording fee. Once VIP returns the original recorded Praecipe to you, you should be sure to check that it shows of record in PhilaDox, the Department of Records' online index of recorded documents. (If you do not have access to PhilaDox, you can ask a VIP staff member to check for you.) This is important to ensure that there is no cloud on the client's claim to title in the future.

C. FILING AN INHERITANCE TAX RETURN

Once the Recorder of Deeds has recorded the appropriate documents to transfer title of the property into the client's name, an inheritance tax return then needs to be filed with the Register of Wills. Pennsylvania inheritance tax is typically owed on all taxable assets in an estate at the time of the decedent's death. **However, 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.** See "Step 6: Pennsylvania Inheritance Tax Returns" for more information on preparing and filing an inheritance tax return.

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" for information on applying for Tangled Title Funds to pay for this cost.

Note that the federal estate tax is generally not applicable to VIP clients, as it only applies to estates with assets in excess of $11,200,000 as of January 1, 2019.

If you are unsure as to whether an inheritance tax return listing your client's property has already been filed for the decedent's estate, you should contact the Pennsylvania Department of Revenue, Philadelphia Inheritance Tax Unit, at (215) 560-3685.

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 at: https://www.revenue.pa.gov/FormsandPublications/FormsforIndividuals/InheritanceTax/Pages/default.aspx , 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 $11,200,000 as of January 1, 2019.

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 <u>only</u> 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 Appendix 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 http://www.nfda.org/news/statistics 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 or the Appendix.)

- 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 Summer 2019:

- Property passing to a surviving spouse is not taxed. (72 PA. C.S. § 9116 or the Appendix.)

- 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 Inheritance Tax Form REV-1501 ("Instructions for Form REV-1500, PA Inheritance Tax Return – Resident Decedent"), available at https://www.revenue.pa.gov/FormsandPublications/FormsforIndividuals/InheritanceTax/Documents/rev-1500_inst.pdf, for the applicable rate.

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 <u>and</u> 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 <u>most recent</u> 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 Wavier 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. (See Appendix for a sample letter.)

You should request a waiver of the principal, interest, and penalties due on the <u>older</u> estate(s), so that the client is paying inheritance tax *only* on the property he or she is receiving from the <u>most recent</u> 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 <u>every</u> estate involved.
- Collect funds to pay for the <u>principal</u> amount owed on the <u>most recent</u> 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.
  - See Appendix for sample letters to the Department of Revenue

Teri-Lee Rhoades, 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 Ms. Rhoades at (717) 346-4650 or TERhoades@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.)

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 the connect clients with housing counselors for assistance. The OOPA application and a link to a list of housing counseling agencies are available in the online Appendix to this manual. 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. See the Appendix 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

- **It's likely either Mr. Grifo, Mr. Krisch, or Mr. Chung is assigned to your case. If you are not sure who is handling it, email them all.**

Rosario Grifo, Esq.
Rosario.Grifo@lgbs.com

David Krisch, Esq.
David.Krisch@lgbs.com

Paul Chung, Esq.
Paul.Chung@lgbs.com

Linebarger Goggan Blair & Sampson, LLP
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City of Philadelphia Law Department

Email Lisa Bender and cc Jim Zwolak

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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 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 Appendix regarding current real estate taxes. See the Appendix 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 (at https://ework.phila.gov/revenue/) 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 Appendix 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. 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 or the Appendix.)

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).

APPENDIX

TO

PROBATE TRAINING GUIDE

The Probate Process and an Alternative to Probate

The complete Appendix may be found online at https://www.phillyvip.org/resources
Documents included in this abbreviated version are designated with an *

APPENDIX

GENERAL RESOURCES

Resource Guide for Homeowners
Understanding a Title Report
Determining the True Value of VIP Clients' Homes
Searching for Missing Parties
Freedom of Information Act (FOIA) Request Form
Death Certificate Request Form – By Mail
Death Certificate Request Form – By Facsimile
Notice to Department of Human Services that Estate Is Subject to Recovery
DHS Undue Hardship Waiver Request Form
Contact Information and Rates for Publication
*Possible Timetable for a VIP Probate Case
*Intestacy Diagram

PROBATE FORMS

Petition for Grant of Letters After 21 Years
*Petition for Probate and Grant of Letters
*Oath of Personal Representative
Estate Information Sheet
*Renunciation for Personal Representative
*Notice of Beneficial Interest in Estate
*Certification of Notice to Heirs
Estate Advertising Form for the *Legal Intelligencer*
Estate Advertising Form for the *Philadelphia Daily News*
Estate Advertising Form for the *Philadelphia Tribune*
*Inventory
Family Settlement Agreement (Receipt, Release, and Indemnification)
Petition for Adjudication and Statement of Proposed Distribution
Accounting Sheet
*Status Report

§ 3546 FORMS

Praecipe to Record as *Lis Pendens* to the Department of Records of Philadelphia County
*Petition for Determination of Title to Decedent's Interest in Real Estate Pursuant to 20 PA. C.S. § 3546
Proposed Decree Nisi
Consent to Petition
Letter to Heirs to Sign Consent Form

In Forma Pauperis Attorney Certification
Letter Noticing Parties of the Filed Petition
Certificate of Service
*Motion for Alternative Service
*Attorney's Affidavit in Support of Motion for Alternative Service
*Memorandum of Law in Support of Motion for Alternative Service
Proposed Order for Alternative Service
Letter Noticing Parties of the Court's Decree
Reduced Publication Letter to Judge
Notice for Publication
Return of Notice
Praecipe to Remove *Lis Pendens*
Notice by Posting

DEED FORMS

Letter to Client with Title Insurance Information
Standard (Special Warranty) Deed
*Deed by a Personal Representative and All Heirs to Heir(s) Obtaining Title
Deed of Confirmation
List of Common Level Ratio Factors from 1986 to Present
List of Deed Book Names
*Philadelphia Real Estate Transfer Tax Certification
*Pennsylvania Realty Transfer Tax, Statement of Value
Attorney Affidavit for Recording a Deed

INHERITANCE TAX RETURN FORMS

List of Common Level Ratio Factors
*Sample Letter for Waiver of Inheritance Tax Interest and Penalties

REAL ESTATE TAX FORMS

Letter to the City, Linebarger, and GRB (XSPAND) Regarding Representation of Your Client
Letter to Your Client on Current Year and Future Real Estate Taxes
Information for Clients on Paying Current Year Real Estate Taxes
Tips for Clients on Paying Future Real Estate Taxes
Sample Email to Real Estate Tax Collector
Owner Occupied Payment Agreement (OOPA) Applications
Sample Email to Real Estate Tax Collector

STATUTES

Intestacy Law

20 PA. C.S. § 2101	Intestate Estate

Probate Process

20 PA. C.S. § 2102	Share of Surviving Spouse
20 PA. C.S. § 2103	Shares of Other than Surviving Spouse
20 PA. C.S. § 2104	Rules of Succession
20 PA. C.S. § 3121	Family Exemption – When Allowable
20 PA. C.S. § 3122	Payment or Delivery of Exemption
20 PA. C.S. § 3123	Payment from Real Estate
20 PA. C.S. § 3131	Place of Probate
20 PA. C.S. § 3133	Limit of Time for Probate
20 PA. C.S. § 3152	Granting of Letters of Administration After 21 Years Has Elapsed
20 PA. C.S. § 3155	Persons Entitled to Administer an Estate
20 PA. C.S. § 3156	Persons Not Qualified to Administer an Estate
20 PA. C.S. § 3162	Advertisement of Grant of Letters
20 PA. C.S. § 3546	Petition for Determination of Title
20 PA. C.S. § 3390	Specific Performance of Contracts
20 PA. C.S. § 3392	Classification and Order of Payment

Registering a Notice of Interest in Real Property for Tax Collection Purposes

20 PA. C.S. § 3546	Determination of Title to Decedent's Interest in Real Estate

Transfer Tax

53 PA. C.S. § 7193.1	Notice of Interest
72 P.S. § 8101-C	Definitions

Inheritance Tax

72 P.S. § 9116	Inheritance Tax
72 P.S. § 8102-C.3	Excluded Transactions
PHILA. CODE § 19-1402	Definitions
PHILA. CODE § 19-1405	Excluded Transactions