

ANCILLARY ESTATES (Non-resident decedents)

When a nonresident of Vermont has an estate administered in the decedent's home jurisdiction, there may also have to be an estate opened in Vermont, as when, for example, the decedent owned Vermont real estate. The Vermont estate is then called an "ancillary" administration. 14 VSA §§113-116, 1215-

1216; VRPP Rule 80.2.

An ancillary estate is initiated by filing: (1) the ancillary petition (*Form 6*) signed by the home state fiduciary or other interested person, (2) a list of interested persons (*Form 5*), (3) a description of the ancillary property (*Form 7*) (See "*Real estate description*" under PARTICULAR ISSUES), (4) the filing fee, (5) an **authenticated** copy of the will and the probate thereof from the home state court, or other acceptable proof that the will is effective in that jurisdiction. Note that an **authenticated** document is different from a **certified** document. Commonly, the home state court will understand what is required.

The petitioner will be required to give notice to all interested persons that a hearing on allowance of the will has been scheduled and that any objections must be served within 14 days of service of the notice. *VRPP Rule 4; VRPP Rule 80.2(b)*. Objections must be filed in writing within the time allowed. Objections must state why the will should not be allowed or any other objections. *VRPP Rule 80.2(b)*. If no objections are filed, the will is allowed on the date specified in the notice. Otherwise, a hearing will be held on that date.

The probate process for an ancillary estate is generally the same as for a Vermont estate. The fiduciary may submit an affidavit stating that all debts in the home jurisdiction have been paid in full, instead of providing notice to creditors in the home jurisdiction. Creditors shall be given notice in Vermont as well.

The ancillary fiduciary is obligated to pay debts of the decedent, wherever located. If the estate is insolvent overall, claims are paid on a pro rata basis. 14 VSA §1215. **CAUTION:** Requests for partial decrees of real estate from the ancillary estate must be supported by proof that the home jurisdiction estate has sufficient assets to pay all claims against the estate.

Instead of a final decree to the beneficiaries, if the home jurisdiction administration is open, the remaining estate shall be paid over to the home jurisdiction fiduciary pursuant to 14 VSA §1216, with exceptions provided therein.

A tax clearance must be obtained prior to final distribution of remaining assets.