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WILLS, TRUSTS, AND ADMINISTRATION OF ESTATES Descent and Distribution: Provide for the Vesting in the Heirs Subject to Divestment of Certain Interests in Real Property Owned by an Intestate Decedent; Provide for Vesting of Such Interests in an Administrator for the Benefit of the Heir and Creditors of the Decedent; Require the Assent of the Administrator for Revesting in the Heirs; Provide for Recovery of Possession from the Heirs by the Administrator in Certain Circumstances; Provide That an Order for Sale or Distribution After Notice is Conclusive Evidence

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WILLS, TRUSTS, AND ADMINISTRATION OF ESTATES

Descent and Distribution: Provide for the Vesting in the Heirs Subject to Divestment of Certain Interests in Real Property Owned by an Intestate Decedent; Provide for Vesting of Such Interests in an Administrator for the Benefit of the Heirs and Creditors of the Decedent; Require the Assent of the Administrator for Revesting in the Heirs; Provide for Recovery of Possession from the Heirs by the Administrator in Certain Circumstances; Provide That an Order for Sale or Distribution After Notice is Conclusive Evidence

CODE SECTION: O.C.G.A. § 53-2-7 (amended)
BILL NUMBER: HB 1204
ACT NUMBER: 826
GEORGIA LAWS: 2000 Ga. Laws 1335
SUMMARY: The Act repeals a portion of the 1998 Probate Code Revision and provides that any real property belonging to an intestate decedent vests immediately in the decedent's heirs at law. If an administrator is subsequently appointed, the real property will vest in the administrator for the benefit of the decedent's heirs and creditors. Title only reverts in the heirs if the administrator assents.
EFFECTIVE DATE: May 1, 2000¹

History

In its 1998 revision of the Probate Code, the Georgia General Assembly amended Code section 53-2-7 to require that the heirs of an intestate decedent obtain an Order of No Administration from the probate court or, alternatively, wait three years prior to

1. *See* 2000 Ga. Laws 1335, §§ 2-3, at 1336. The Act took effect upon approval by the Governor. *See id.*

gaining title to the decedent's real property.² The result of this change was that the heirs of intestate decedents were forced to incur the expense and delay of obtaining legal counsel and filing in probate court.³ Particularly where the estate was limited and might only contain small homes or property, this amounted to a serious financial burden on heirs who previously could have borrowed against the value of the property.⁴ HB 1204's sponsor, House Speaker Murphy, noted the hardship this placed on rural and low-income heirs.⁵ He expressed his desire to return the law to its pre-1998 state and avoid the need for heirs to "jump through hoops" of probate court unless the decedent left a minor child.⁶

HB 1204

Speaker Tom Murphy, of the 18th House District, sponsored HB 1204, introducing it on the House floor on January 24, 2000.⁷ The House assigned the bill to its Judiciary Committee, which favorably reported the bill on February 8, 2000.⁸ The House unanimously passed the bill, as introduced, on February 17, 2000.⁹

On February 21, 2000, HB 1204 was assigned to the Senate Judiciary Committee, which favorably reported the bill on March 15, 2000.¹⁰ The bill was tabled on March 20, 2000, but the Senate unanimously passed the bill, as introduced, on March 22,

2. See 1998 Ga. Laws 1586, § 9, at 1594 (formerly found at O.C.G.A. § 53-2-7 (Supp. 1999)).

3. See *id.*; see also Audio Recording of House Proceedings, Feb. 17, 2000 (remarks by Rep. Thomas Murphy) <<http://www.ganet.org/services/leg/audio/2000archive.html>> [hereinafter House Audio]; Audio Recording of Senate Proceedings, Mar. 22, 2000 (remarks by Sen. Michael Meyer von Bremen) <<http://www.ganet.org/services/leg/audio/2000archive.html>> [hereinafter Senate Audio].

4. See 1998 Ga. Laws 1586, § 9, at 1594 (formerly found at O.C.G.A. § 53-2-7 (Supp. 1999)); see also House Audio, *supra* note 3; Senate Audio, *supra* note 3.

5. See House Audio, *supra* note 3.

6. See *id.*

7. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000; see also HB 1204, as introduced, 2000 Ga. Gen. Assem.

8. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

9. See Georgia House of Representatives Voting Record, HB 1204 (Feb. 17, 2000).

10. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

2000.¹¹ Governor Barnes signed HB 1204 into law on May 1, 2000, and it took effect the same day.¹²

The Act

Section 1 of the Act strikes, in its entirety, former Code section 53-2-7 that was enacted as part of the Revised Probate Code of 1998.¹³ The deleted portion of the Code provided for the automatic vesting of all property, real and personal, in the administrator of an intestate decedent's estate.¹⁴

Subsection (a) replaces this automatic vesting requirement and instead provides that all real property belonging to an intestate decedent vests immediately in the heirs at law unless an administrator is later appointed.¹⁵ Subsection (b) provides that all other property vests in the administrator for the benefit of the decedent's heirs and creditors.¹⁶ Subsection (c) requires that should an administrator subsequently be appointed, title to any real property vests in the administrator for the benefit of the decedent's heirs and creditors.¹⁷ Title to the real property does not revert in the heirs without the assent of the administrator.¹⁸ Assent is provided as set out in Code section 53-8-15.¹⁹

Subsection (d) provides that once an administrator is appointed, the right to possession of the whole estate is in the administrator and remains so throughout the administration.²⁰ Thus, the

11. See Georgia Senate Voting Record, HB 1204 (Mar. 22, 2000); State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

12. See 2000 Ga. Laws 1335, §§ 2-3, at 1336; see also State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

13. Compare 1998 Ga. Laws 1586, § 9, at 1594 (formerly found at O.C.G.A. § 53-2-7 (Supp. 1999)), with O.C.G.A. § 53-2-7 (Supp. 2000).

14. Compare 1998 Ga. Laws 1586, § 9, at 1594 (formerly found at O.C.G.A. § 53-2-7 (Supp. 1999)), with O.C.G.A. § 53-2-7 (Supp. 2000).

15. Compare 1998 Ga. Laws 504, § 10, at 532-33 (formerly found at O.C.G.A. § 53-2-7 (Supp. 1999)), with O.C.G.A. § 53-2-7(a) (Supp. 2000).

16. Compare 1998 Ga. Laws 1586, § 9, at 1594 (formerly found at O.C.G.A. § 53-2-7 (Supp. 1999)), with O.C.G.A. § 53-2-7(b) (Supp. 2000).

17. Compare 1998 Ga. Laws 504, § 10, at 533 (formerly found at O.C.G.A. § 53-2-7 (Supp. 1999)), with O.C.G.A. § 53-2-7(c) (Supp. 2000).

18. Compare 1998 Ga. Laws 504, § 10, at 533 (formerly found at O.C.G.A. § 53-2-7 (Supp. 1999)), with O.C.G.A. § 53-2-7(c) (Supp. 2000).

19. See O.C.G.A. § 53-2-7(c) (Supp. 2000); see also O.C.G.A. § 53-8-15 (Supp. 2000).

20. Compare 1998 Ga. Laws 504, § 10, at 533 (formerly found at O.C.G.A. § 53-2-7 (Supp. 1999)), with O.C.G.A. § 53-2-7(d) (Supp. 2000).

administrator may recover possession from the heirs at law or purchasers from them.²¹ However, in order to recover real property, the administrator must show at trial either that the property has been in the administrator's possession and is held by the defendant without the administrator's consent, or that it is necessary for the administrator to have possession in order to pay debt, make a proper distribution, or for other purposes provided by law.²² An order of the Probate Court is conclusive of either fact.²³

Subsection (e) provides that if an order is entered under Code section 53-2-41, no administration is necessary, or if the administrator assents to the vesting of title in the heirs, the heirs may take possession of the property or sue for possession in their own right.²⁴

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21. Compare 1996 Ga. Laws 504, § 10, at 533 (formerly found at O.C.G.A. § 53-2-7 (Supp. 1999)), with O.C.G.A. § 53-2-7(d) (Supp. 2000).

22. Compare 1996 Ga. Laws 504, § 10, at 533 (formerly found at O.C.G.A. § 53-2-7 (Supp. 1999)), with O.C.G.A. § 53-2-7(d) (Supp. 2000).

23. Compare 1996 Ga. Laws 504, § 10, at 533 (formerly found at O.C.G.A. § 53-2-7 (Supp. 1999)), with O.C.G.A. § 53-2-7(d) (Supp. 2000).

24. See O.C.G.A. § 52-2-7(e) (Supp. 2000).