

## Nobody wants to talk about this

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## If The Worst Should Happen...

### Casualty Assistance Clients

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### Types of Clients

- Active Duty or Retiree Survivor (Spouse, child, or parent of AD military member)
  - Active Duty Death – Casualty Notification; Assistance Officer is provided
  - Retiree Survivor - Notifies CAC/CMA; Assistance Officer is provided (service dependent)
- Dual Military or AD Military w/non-military spouse
  - Dual Military – Casualty Notification; Assistance Officer is provided
  - Active Duty w/non-military spouse – Notifies CAC/CMA; generally no assistance through program (Family SGLI claim)
    - \*Legal Assistance time to shine
    - \*Grieving while Serving (Survivor Outreach Services – ACS Army)
- Retiree- generally no assistance through program
  - \*Legal Assistance time to shine

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### Casualty Notification Process

- Commander reports incident to Casualty Operations Branch
- Casualty Assistance Center (CAC) produces casualty report after verifying incident
- Family is notified
  - In person by Casualty Notification Officer (CNO) when deceased, or Missing in Action (MIA) – massive coordination effort when in multiple locations
  - By telephone by rear detachment or CAC when Very Seriously Injured (VSI) or Seriously Injured (SI)
  - By telephone when (Not Seriously Injured) NSI as a result of hostile action (exceptions may apply)

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### Casualty Assistance Process

- Casualty Assistance Officer is assigned to each eligible family member\* (see DD Form 93 for AD; spouse for retiree) and will make contact with family member immediately after notification
  - For AD, Care Team should be deployed at this time to assist survivor spouse/FRG member
- CAO will assist AD survivors with travel to/from military functions, for example Transfer Ceremony at Dover, memorials and funerals
- CAO will provide transportation to/from offices for benefits for AD and Retiree survivors (checklist)
  - Examples: Casualty and Mortuary Affairs (SGLI), Veterans Affairs, Retirement Services, Social Security, Tricare, Legal Assistance, Survivor Outreach Services (Army), etc.

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### DD Form 93 – Record of Emergency Data

- Contact information for Primary/Secondary Next of Kin
- Identifies Death Gratuity Recipient
  - Remember purpose of this payment
  - Caution: minor child needs trust or UTMA/UGMA language or guardian will have to be appointed
- Unpaid Pay beneficiaries
  - Caution: minor child needs trust or UTMA/UGMA language or guardian will have to be appointed
- Person Authorized to Direct Disposition (PADD)

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## Probate...

I'm sorry for your loss...

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### Information to know from CAO before meeting with any client...

- Cause of Death
  - Combat Related - Downrange
  - Active Duty Stateside
  - Illness – may have seen this category already
  - Accident
  - Suicide
- Who received the benefits – Death Gratuity and SGLI
- Have the memorials and funeral services already occurred
- Significant upcoming events – anniversary, Deceased's birthday, child's birthday

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### Who is your client?

- Spouse – SGLI, Death Gratuity, PADD
- Parent of single or divorced SM or PADD
- Minor child (child out of wedlock or of a divorce)
  - Possible claims against estate – general overview and advice to obtain civilian counsel (personal property, SGLI, child support)
  - If ex-spouse or biological parent is coming in on behalf of minor child, be cautious to only answer the questions that pertain to the child
- Adult child (usually with retirees)
  - At death of last parent – general overview to executor and advice to obtain civilian counsel

\*Know the lingo – Gold Star Spouse, Gold Star Mother, etc.  
\*I'm sorry for your loss.

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### What is probate?

- The court process by which a Will is proved valid or invalid; the legal process wherein the estate of a decedent is administered.
- When a person dies, his or her estate must go through probate, which is a process overseen by a probate court. If the decedent leaves a will directing how his or her property should be distributed after death, the probate court must determine if it should be admitted to probate and given legal effect. If the decedent dies intestate—without leaving a will—the court appoints a Personal Representative to distribute the decedent's property according to the laws of Descent and Distribution. These laws direct the distribution of assets based on hereditary succession.

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### POWER OF ATTORNEY

- Some clients may say they have everything squared away because their spouse left them a POA or they come in complaining that a bank won't take the POA and the account is frozen.
- Gently explain the POA terminates upon death so the POA they have will no longer allow them to handle their spouses' affairs. Ask if they have a Last Will and Testament.

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### Is there a Last Will and Testament?

More importantly, can you find it...

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## Testate vs. Intestate

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### TESTATE – With a will

- Known will must be filed; if multiple, file all
- Cannot just start distributing assets
- Where did decedent list as resident? What is on death certificate?
- Typically file where decedent lived at time of death (domicile) or location of property or assets
- Ancillary Proceedings
- Will must be "proved" by the Court (Clerk)
- Older wills do not always have self-proving affidavits and can have issues with proof; require affidavits of 2 of 3 witnesses to will (witnesses or notary) or other statutory requirements
- Once proven, Executor is appointed by the Court and distributions can be made after creditors are satisfied

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### INTESTATE – Without a will

- Spouse is not always the sole beneficiary if there was no will
- State intestacy laws will control
- May have to have guardian appointed if minor children also inherit
- Administrator will be appointed based on statutory requirements
- If use creditor's affidavit, may have to get adult children signatures

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The Big Question:  
Does the client need to open a probate estate?

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Lawyer Answer:  
*It depends.*

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### It depends...

- State Law – some states require probate regardless of asset value; others base on a threshold amount
- In some states, do not need to open probate when first spouse dies as most high dollar property passes to spouse by operation of law
- In NC, Asset Determination
  - Spouse Year's Allowance /Child Year's Allowance
  - Deficiency Judgment
  - Look at Debts
  - Creditor's Affidavit – spouse remains responsible for debts
  - Small Estate Administration

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## Types

- Full Probate
- Small Estate Administration
- Other, for example, in NC Spouse Year's Allowance, etc.

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## Spouse Year's Allowance

§ 30-15. When spouse entitled to allowance. Every surviving spouse of an intestate or of a testator, whether or not the surviving spouse has petitioned for an elective share, shall, unless the surviving spouse has forfeited the surviving spouse's right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of thirty thousand dollars (\$30,000) for the surviving spouse's support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse.

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## Child's Allowance

§ 30-17. When children entitled to an allowance. Whenever any parent dies survived by any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be entitled to receive an allowance of five thousand dollars (\$5,000) for the child's support for the year next ensuing the death of the parent.

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## Deficiency Judgment

§ 30-30. Judgment. The clerk of superior court shall hear the matter and determine whether the petitioner is entitled to some or all of the relief sought and, if the clerk determines that the petitioner is so entitled, the clerk shall determine the money or other personal property of the estate and assign to the petitioner a sufficiency thereof for petitioner's support for one year from the decedent's death. Any deficiency shall be made up from any of the personal property of the deceased, and if the personal property of the estate shall be insufficient for such support, the clerk of superior court shall enter judgment against the personal representative for the amount of such deficiency, to be paid when a sufficiency of such assets shall come into the personal representative's hands. Any judgment so rendered shall have the same priority over other debts and claims against the estate as an allowance assigned pursuant to G.S. 30-15 or G.S. 30-17.

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## Assets are below statutory amounts, but...

Other Issues that may require probate even if below the asset amount

- Medical Records
- Malpractice/wrongful death lawsuits
- Debts (known or unknown)
- Mortgage issues
- Selling Property
- Other

May need Letters Testamentary or Letters of Administration to deal with these issues.

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Issues to go through with probate client

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## ASSETS

Initial Application for Opening the Estate looks at Assets only – not debts

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## Real Property

- Real Property
  - Warranty Deed in NC /Tenants by the Entirety
    - Mortgage
      - Refinance
      - Continue to pay note
        - Problems
      - Pay off
        - Build credit\*
    - Mobile Home on Land
      - Real property vs. land and vehicle
      - Cancel title – DMV Form
    - Landlord Tenant
      - NC statute to release survivor from lease
    - Property in other states (how titled)
      - Ancillary/primary

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## Personal Property

- Personal Property
  - Household Goods
  - Vehicles
    - Joint titled
    - Decedent's Name only
      - Pay off/refinance vs. Repossession
        - DMV
        - Lien holder
  - Specific bequests
  - Bank Accounts
    - Debts against accounts
  - Other
    - Gold Bars/Silver Coins
    - Specific Bequests to Spouse

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## Pass outside of Probate...

- Beneficiary Accounts
  - Insurance (SGLI or private)
  - Investments w/ beneficiary
  - Retirement w/ beneficiary

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## DEBTS

Sometimes the debt situation is cause to open an estate when the assets are not enough to otherwise do so.

Clients need to know how to deal with debts and creditors even if they don't open an estate.

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## Debts

- Types: Utilities, credit cards, loans, personal agreements, separation agreements/court orders, furniture loans (or other PMSI), mortgage
- For Probate, debts in the Decedent's name only
  - Known creditors
  - Unknown creditors
    - Publication
- Joint Debts
- Debt Collectors
- Repossession/Release back to creditor
- ID Theft
  - Obituary in paper

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## If Need To Open Probate

- State AOC Forms
- Deadlines!!!
- Responsibilities of Personal Representative

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## I don't do casualty assistance. Why do I care about the probate issues?

When you are meeting with deploying SM or estate planning client, these "end results" should be in your mind as you are helping them work through the issues.

Difficult to draft an effective estate plan when you don't know the outcome of the documents you are drafting!

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## Additional Related Issues

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- VA Benefits
  - Cause of Death on Death Certificate (Service Related/Combat Related) – Amend Death Certificate through the funeral home
- Line of Duty Investigations
  - Cause of Death
    - Suicide vs. willful
      - Russian Roulette or Quick Draw
      - Alcohol/Drugs
  - Appeals
  - Loss of VA Benefits

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- Same Sex Relationships
- Will Contests
  - Statutory Share - Spouse
- Scams
  - Door to door sales
  - Emotional requests
  - Religious donations
  - Financial investments
  - Red Cross Scam – injury of SM; confirm ID and authorized to operate
  - Family

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- \*Purchase of Real Property w/SGLI
  - Note that some clients will ask about purchasing a home outright or having a home built with SGLI proceeds.
  - We do not give financial advice – I refer generically to a financial adviser with the caveat that if they offer a product they will try to sell the client the product. However, for general information, they will lose tax benefit on mortgage and will not build credit.
- Army has financial assistance and grief counseling for spouse & children
- Survivor Outreach Services – Army ACS

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## Estate Planning Documents for Spouse

Moving forward from here...

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### When they are ready...

- Last Will and Testament
  - Guardianship
  - Trusts/UGMA/UTMA
- Advance Medical Directives
  - Health Care Power of Attorney
  - Living Will
  - If serious health issues, DNR, POLST, MOST, etc.
- Powers of Attorney
  - Financial
  - Children / Travel overseas passport affidavit
- Funeral Arrangements
- AD Military Family Care Plan
- Other

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