

RULE 12. SPECIAL PETITIONS

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12.1. Family exemption.
12.2. Allowance to surviving spouse of intestate.
12.3. Revocation, vacating and extension of time for filing of surviving spouse's election.
12.4. Appointment of a guardian ad litem or trustee ad litem.
12.5. Appointment of a guardian for the estate or person of a minor.
12.6. Appointment of a trustee.
12.7. Discharge of a fiduciary and surety.
12.8. Partition.
12.9. Public sale of real property.
12.10. Private sale of real property or options therefor.
12.11. Mortgage or lease of real property.
12.12. Inalienable property.
12.13. Designation of a successor custodian.
12.14. Confirmation of appointment.
12.15. Cemetery Companies and Non-Profit Corporations Incorporated for Charitable Purposes.

Rule 12.1. Family exemption.

- (a) A petition for a family exemption shall set forth
- (1) facts establishing a prima facie right of the petitioner to the exemption;
 - (2) if the exemption is claimed from real estate, a request for the appointment of two appraisers to appraise the same;
 - (3) a description of the property claimed; and
 - (4) whether allowance of the claim prior to the audit or confirmation of the account is requested.
- (b) The manner of appraising the property, of filing and confirming the appraisal, and of advertising or giving notice thereof shall be prescribed by local rules.
- (c) The court may, at the request of the petitioner, award in distribution, specific real estate included in the account in satisfaction of, or on account of, the family exemption without the necessity of compliance with the procedure outlined in subparagraphs (a) and (b) of this rule, provided, however, that all parties in interest agree in writing to the valuation at which the real estate is to be awarded.

Official Note: The Act of 1959, Nov. 10, P. L. 1450 (20 P. S. § 320.211) increased the exemption to \$1,000.00 where decedent died after that date. The Act of 1963, June 11, P. L. 124 (20 P. S. § 320.211) added parents as possible claimants. The suggested general language not only avoids exception for effective dates but also may obviate future revisions of the Rule should the Legislature continue to expand the scope of the exemption.

Paragraph (c) is an adaptation of a similar provision in Rule 12.2 of this Section. It would facilitate the award where all parties in interest are in accord.

Rule 12.2. Allowance to surviving spouse of intestate.

(a) When no account is filed and all or part of the spouse's statutory allowance is claimed from real estate, the claim shall be presented by petition, which shall set forth

- (1) facts establishing a prima facie right of the spouse to the allowance;
- (2) a description of the real estate; and
- (3) a request for the appointment of two appraisers to appraise the real estate.

(b) The manner of appraising the property, of filing and confirming the appraisal, and of advertising or giving notice thereof shall be prescribed by local rules.

(c) The court may, at the request of the surviving spouse, award specific real estate in satisfaction of, or on account of, the spouse's statutory allowance without compliance with the procedure outlined in subparagraphs (a) and (b) of this rule if all parties in interest agree in writing that the surviving spouse is entitled to the allowance and to the valuation at which such real estate is to be awarded.

Official Note: Deletion of specific reference to the former statutory allowance of \$10,000.00 increased to \$20,000.00 allows greater flexibility. The rules would not have to be amended in the future if the statutory amount should be increased. With the broader language employed there is no longer any need to refer to the specific statutory provisions.

As amended, the rule recognizes the present practice of making the award of real estate in satisfaction of the spouse's allowance a part of the distribution decree when a court accounting is filed. While this rule will be employed only in a minimum of instances for the foregoing reason and also because of the availability of Section 3546 of the Probate, Estates and Fiduciaries Code, it, nevertheless, is considered advisable to preserve it in its altered form as a guide when it is to be employed.

Rule 12.3. Revocation, vacating and extension of time for filing of surviving spouse's election.

(a) A petition to revoke or vacate an election of a surviving spouse to take under or against the will and other conveyances of the decedent shall set forth

- (1) the date of the decedent's death, whether his will has been probated and, if so, a reference to the place of recording;
- (2) the name and capacity of the fiduciary of the decedent's estate, if any, and a reference to the record of his appointment;
- (3) the names, addresses and relationship, if known, of those interested in the estate and the extent of the interest of each of them;
- (4) the names of the parties in interest who have consented to the revocation or vacating of the election, and the names of those who have not consented and the reason, if any, for so refusing;
- (5) a description and valuation of the decedent's real and personal property affected by the election;

(6) the date and manner of executing the election desired to be revoked or vacated; whether the same has been recorded, registered or filed, and if so, the date and place thereof;

(7) whether the surviving spouse has made or executed and delivered at any place an election contrary to that desired to be revoked or vacated and whether that election has been recorded, registered or filed, and if so, the date and place thereof;

(8) the facts relied upon to justify the revocation or vacating of the election; and

(9) a request for a citation upon the parties in interest who have not joined in the petition or who have not consented thereto to show cause why the election should not be revoked or vacated.

(b) A petition for the extension of the time in which the surviving spouse may file an election to take against the will and other conveyances shall be filed at such place and time and shall be in such form as local rules may prescribe.

Official Note: The amendments are required to implement the right to elect against conveyances as authorized by Section 6111 of the Probate, Estates and Fiduciaries Code.

Rule 12.4. Appointment of a guardian ad litem or a trustee ad litem.

(a) On petition of the accountant or any party in interest, or upon its own motion, the Court may appoint (1) a guardian ad litem to represent a minor or an incompetent not represented by a guardian or (2) a trustee ad litem to represent an absentee, a presumed decedent, or unborn or unascertained persons not already represented by a fiduciary, unless the Court considers that the interests of such persons are adequately represented.

(b) The same person may be appointed as guardian ad litem and trustee ad litem when the interests represented are not conflicting. Application for such an appointment may be made in one petition.

(c) The petition shall set forth

(1) the name, age and address of the minor or incompetent for whom a guardian ad litem is to be appointed and his relationship, if any, to any party in interest and to the decedent or settlor; and

(2) the interest of the minor, incompetent, absentee, presumed decedent, or the unborn or unascertained interests to be represented by a guardian ad litem or a trustee ad litem, the provisions of any instrument creating such interests, the necessity for such interests being represented and the proceedings in which they are to be represented.

(d) A decree appointing a guardian ad litem or a trustee ad litem shall specify the period or proceedings during which he shall act as such.

Rule 12.5. Appointment of a guardian for the estate or person of a minor.

(a) A petition for the appointment of a guardian for the estate or person of a minor shall be filed by the minor, if over fourteen years of age and, if under such age, by his parent or parents, the person with whom he resides or by whom he is maintained or by any person as next friend of the minor.

(b) The petition shall set forth

(1) the name, address and age of the minor, and the names and addresses of his parents, if living;

(2) the name, address and relationship to the minor of the petitioner, if the petition is not filed by the minor;

(3) that the minor's parents consent to the petition, if it is not filed by them, or the reason why they do not consent;

(4) the necessity of the appointment of a guardian and that the minor has no guardian or that a guardian already appointed has died or has been discharged or removed by the court, together with the date of such death, discharge or removal and a reference to the court record of such discharge or removal;

(5) the name, address and age of the proposed guardian and his relationship to the minor, if any;

(6) the nature of any interest of the proposed guardian adverse to that of the minor including inter alia a reference to any estate in which the minor is interested and in which the proposed guardian is a fiduciary or surety or employe of a fiduciary or surety therein.

(7) if the petition is for the appointment of a guardian of the person, the religious persuasion of the parents of the minor and of the proposed guardian;

(8) if the petition is for the appointment of a guardian of the estate, an itemization of the assets of such estate, their location, approximate value and income, if any;

(9) if the minor is entitled to receive any money as a party to any action or proceeding in any court, a reference to the court record and the amount to which the minor is entitled; and

(10) that notice has been given to the United States Veterans' Administration or its successor, if the minor is the child of a veteran and insurance or other gratuity is payable to him by the United States Veterans' Administration, or its successor.

(c) The proposed guardian's written consent to the appointment shall be attached to the petition.

(d) If the appointment of the same person is requested as guardian of the estates or persons of several minors who are children of the same parents, a single petition shall be filed for such appointment.

(e) If the minor is over the age of fourteen his appearance in court at the time of the presentation of the petition shall be governed by local rule.

Rule 12.6. Appointment of a trustee.

(a) A petition for the appointment of a trustee may be filed by any party in interest and shall set forth

- (1) the reason for filing the petition;
- (2) the provisions of the instrument creating the trust;
- (3) the general character, location and value of the trust property;
- (4) the names, addresses and relationships of all parties in interest and that those who have not joined in or consented to the petition have been given notice of the intention to file the petition, or the reason for failing to give such notice; and
- (5) the name and address of the proposed trustee and his relationship, if any, to any party in interest and his interest, if any, in the trust.

(b) The proposed trustee's written consent to the appointment shall be attached to the petition.

Rule 12.7. Discharge of fiduciary and surety.

(a) Account Previously Filed. A petition for the discharge of a fiduciary and his surety, or of the surety alone, subsequent to an account having been filed and confirmed, shall set forth

- (1) the nature of the fiduciary capacity;
- (2) the date and a reference to the record of the fiduciary's appointment;
- (3) the date of filing the fiduciary's account and that it has been confirmed absolutely; and
- (4) that the entire estate has been distributed to the creditors and parties entitled thereto and that no other property belonging to the estate has been received or remains to be accounted for by the fiduciary.

(b) Account Annexed. In lieu of filing and advertising an account, a personal representative who is distributing an estate under the provisions of Section 3531 of the Probate, Estates and Fiduciaries Code, or the guardian of the estate of a minor who has attained his majority and whose gross estate does not exceed the statutory limitation of an administration without appointment of a guardian, may annex his account to the petition for discharge with the information required above, modified to indicate any previous distribution and to suggest the proper distribution of any balance on hand.

Rule 12.8. Partition.

A petition for partition shall set forth

(a) the date of the decedent's death and whether he died testate or intestate, in whole or in part;

(b) a description, giving the size and location, of the property to be partitioned, the liens and charges to which it is subject and the rents due from tenants thereof, and that the property has not been partitioned or valued for partition;

(c) the names, addresses and relationship of those interested in the land to be partitioned, the extent of the interest of each of such persons, and, if such interest is created by a recorded deed or will, a reference to such record; and

(d) a request for a citation upon the parties in interest who have not joined as petitioners to show cause why an inquest in partition should not be granted.

Rule 12.9. Public sale of real property.

(a) A petition for the public sale of real property shall set forth the reason for filing the petition, a description, stating the size and location of the property to be sold, and the liens and charges to which it is subject.

(b) Public notice of the sale shall be given as required by law and as may be further required by the court by general rule or special order.

Rule 12.10. Private sale of real property or options therefor.

(a) A petition for the private sale or exchange of real property, or for the grant of an option for any such sale or exchange shall set forth

(1) the information required in a petition for the public sale of real property; and

(2) the name and address of the proposed purchaser and the terms of the proposed sale, exchange or option, the consideration therefor, and that this is more than can be obtained at public sale.

(b) The petition shall be supported by the affidavits of at least two competent persons setting forth that they have inspected the real property to be sold, exchanged or optioned and, in the case of an exchange, the property to be received, that they are acquainted with the value of real estate in the locality of such property, that they are not personally interested in the proposed sale, exchange or option, and that in their opinion the proposed consideration is more than can be obtained at public sale.

Rule 12.11. Mortgage or lease of real property.

A petition to mortgage or lease real property shall set forth

(a) the information required in a petition for the public sale of real property, as nearly as may be; and

(b) the name of the proposed mortgagee or lessee and the terms of the proposed mortgage or lease.

Rule 12.12. Inalienable property.

A petition under Chapter 83 of the Probate, Estates and Fiduciaries Code to sell real property at public or private sale or to mortgage real property shall set forth, in addition to the facts required to be set forth by that Act,

- (a) the names of all parties in interest who have not joined as petitioners, and their addresses, if known; and
- (b) if the petition is for the public or private sale of real property subject to a life estate with remainder over and the real property is not held in trust, the petition shall request the appointment of a named trustee to make the sale and hold the proceeds in trust.

Official Note: The amendment is required to conform with repeal of Chapter 82 of the Probate, Estates and Fiduciaries Code and the substitution of Chapter 83 in lieu thereof.

Rule 12.13. Designation of a successor custodian.

A petition for the designation of a successor custodian under the Pennsylvania Uniform Gifts to Minors Act shall set forth as far as practicable the information required in a petition for the appointment of a guardian of the estate of a minor.

Official Note: The Pennsylvania Uniform Gifts to Minors Act is now Chapter 53 of the Probate, Estates and Fiduciaries Code.

There are a number of adverse federal estate and income tax consequences which render it desirable for a donor to avoid acting as a custodian under the Uniform Gifts to Minors Act. This has led to a number of resignations and the act calls for a court designation of a successor custodian in these circumstances.

Rule 12.14. Confirmation of appointment.

- (a) Where a trustee is appointed by or pursuant to a trust instrument, confirmation by the court of such appointment may be obtained on petition which shall set forth
 - (1) the reason for filing the petition; and
 - (2) the pertinent provisions of the instrument creating the trust and providing for the appointment of the trustee.
- (b) There shall be attached to the petition
 - (1) a copy of the trust instrument duly certified by counsel to be a true and correct copy; and
 - (2) the designated trustee's written consent to serve.

Official Note: In many instances it is useful or necessary to establish the qualification of a trustee long before the trust would normally be refunded by distribution of the estate by the personal representative. This is particularly true where life insurance proceeds have been made payable to the testamentary trustee and both the insurer and the beneficiary wish to effect prompt payment of the proceeds. A simple petition under this rule would provide a solution.

Rule 12.15. Cemetery Companies and Non-Profit Corporations Incorporated for Charitable Purposes.

When a cemetery company or non-profit corporation incorporated for charitable purposes is required to file an accounting, the filing by the company or the corporation of its financial statements for its three most recent fiscal years shall ordinarily be sufficient in lieu of an account in the form required by Rule 6 of

these Rules, unless the Court allows the company or corporation to submit the financial information in some other form.

Official Note: Upon application or its own motion, the Court may require more or less financial information as it deems appropriate.

Upon application or on its own motion, the Court may require some or all of the following:

- (1) The statute or other authority under which the company or corporation was incorporated and the date of its incorporation;
- (2) The names and addresses of the trustees or directors of the company or corporation;
- (3) A concise statement of the general purpose of the company or corporation; or
- (4) A copy of the company's or corporation's charter or articles of incorporation and bylaws.

See also OC 5.5 pertaining to notice to the Attorney General.

Source

The provisions of this Rule 12.15 adopted February 21, 1995, effective May 30, 1995, 25 Pa.B. 828; amended February 21, 1995, effective May 30, 1995, 25 Pa.B. 1410.

[Next page is 13-1.]