

Statutory Alternative for Estates to Obtain Rents from Non-Tenants and Possession and Access to Real Property of a Decedent

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If the number of reported cases is any indication, 20 Pa. C.S. §3311 is a little known but potentially potent weapon for an estate administrator to use in certain situations to recover rent from, and/or to obtain possession from, non-tenants occupying the decedent's real property, even where the non-tenants are heirs or devisees. Often an administrator or personal representative is confronted with issues involving an individual who is not an heir or devisee occupying the decedent's home at the time of death with the decedent's permission, but without an ownership interest in the property. The estate administrator has an obligation to protect estate property, and there may be third parties in addition to or instead of the occupant with a right to benefit from a sale of the premises. The administrator, therefore, must decide the most efficient and cost-effective way to protect and administer the estate's real property.

Eviction or Ejectment?

If an occupant had been paying rent prior to the decedent's death, they would likely argue that they are a tenant, regardless of the existence of a written lease. "A tenant is one who occupies land or the premises of another in subordination to the other's title, and with his assent, express or implied." *In Re Wilson's Estate*, 37 A.2d 709, 710 (Pa. 1944) (citations omitted). Under certain statutorily prescribed conditions, the landlord has the right to commence eviction proceedings against a tenant. See Landlord and Tenant Act of 1951, 68 P.S. § 250.501(a) (following written notice, landlord can commence eviction proceedings "(1) upon the termination of a term of the tenant, (2) or upon forfeiture of the lease for breach of its conditions, (3) or upon the failure of the tenant, upon demand, to satisfy any rent reserved and due"). Landlords, however, may not resort to self-help measures (i.e., changing locks) or other actions not involving judicial process, to evict tenants. See *Williams v. Guzzardi*, 875 F.2d 46, 52 n.13 (3d Cir. 1989) (applying Pennsylvania law). Eviction proceedings can take months to resolve and leave estate administration at a deadlock until the tenant is evicted.

Where no landlord-tenant relationship exists, and an occupant nonetheless refuses to promptly vacate or purchase the property from the estate, the administrator can file a civil action for ejectment in the Court of Common Pleas for the county in which the real property is located. See *Plauchak v. Boling*, 653 A.2d 671, 674 (Pa. Super. Ct. 1995). A seemingly archaic doctrine, an ejectment plaintiff must establish an immediate, exclusive possessory right to the property against a defendant who is in actual possession of the property but has no (or an inferior) right to possession. See *id.* With the likely factual issues and need for discovery, ejectment proceedings can also take months, if not years, to resolve.

Enter 20 Pa. C.S. §3311

Section 3311 of the Pennsylvania Probate, Estates and Fiduciaries Code may provide an efficient and practical solution to allow the administrator to recover rent from the occupier and gain possession of the property in order to protect it and prepare it for sale.

20 Pa. C.S. §3311 provides in relevant part:

A personal representative shall have the right to and shall take possession of, maintain and administer all the real and personal estate of the decedent, except real estate occupied at the time of death by an heir or devisee with the consent of the decedent. He shall collect the rents and income from each asset in his possession until it is sold or distributed, and, during the administration of the estate, shall have the right to maintain any action with respect to it and shall make all reasonable expenditures necessary to preserve it. The court may direct the

personal representative to take possession of, administer and maintain real estate so occupied by an heir or devisee if this is necessary to protect the rights of claimants or other parties. Nothing in this section shall affect the personal representative's power to sell real estate occupied by an heir or devisee.

These authors are aware of three relevant decisions applying the statute.

In *In re Daniel Padezanin*, 937 A.2d 475 (Pa. Super. 2007), the decedent was survived by a son and three daughters, his will was determined to be invalid, and it was determined that no *inter vivos* gifts of real estate had been made. A family-owned corporation occupied one piece of his real property. Before and shortly after the decedent's death, one daughter, Debra, resided with him in his home with his consent. Shortly thereafter, she moved into another of the decedent's properties. A second daughter, Danielle, then moved into the decedent's residence three months after he died.

The Orphans' Court assessed rent against the corporation for the period that it operated at the decedent's property following his death. The Superior Court affirmed that decision, reasoning that the corporation was neither an heir nor a devisee of the decedent, having a distinct legal existence apart from its shareholders. *Id.* at 481-82. Because it was neither an heir nor devisee, it received no protection from 20 Pa. C.S. §3311.

The Orphans' Court also awarded the estate rent from Danielle (who had not been living with the decedent at the time of his death), and the Superior Court affirmed that decision as well.

Finally, the Superior Court vacated the award of rent against Debra for the short time that she occupied the decedent's residence after his death because she had lived there with him prior to his death. Notably, however, she could not invoke the statute as to her occupancy of the second property after his death, and the Superior Court upheld the award of rent against her for the period she occupied the second property.

The opinion in *Padezanin* failed to indicate whether anyone occupying any of the decedent's properties refused to leave in a timely fashion when requested by the administrator. The decision focused solely on rent and relied on authority confirming that, as long as an estate is solvent, rent will not be awarded to an estate from an heir or devisee occupying land of the decedent when the decedent died. Two key takeaways remain: (1) the court awarded rent to the estate against the corporation, which was essentially treated as a trespasser; and (2) the court awarded rent to the estate against the daughters for their occupancy that began after the decedent's death.

In the second case, *In re Estate of Bouks*, 964 A.2d 4 (Pa. Super. 2008), a son, one of two estate beneficiaries, was residing with his mother, the decedent, at the time of her death and continued to live on the estate's property for four more years without paying rent. There, the son wanted to purchase the property but was ultimately responsible for the delay in the disposition of the property. Though he assumed responsibility for administering the estate, he had to be ordered to file an accounting and to place the home for sale. When he failed to comply, his sister, who was a co-executor and co-beneficiary, filed a contempt petition, which forced him to purchase the home. When he filed his account, his sister objected, arguing that he should have paid rent for the period that he occupied the estate's real property.

The Superior Court in *Bouks* distinguished its situation from that of the daughter Debra in *Padezanin*, who had occupied the decedent's residence with his permission during his lifetime, vacated shortly thereafter and did not engage in conduct preventing the real estate from being properly administered. Finding that the son in *Bouks* was directly responsible for the delay in his purchase of the estate's real property, the Superior Court affirmed the Orphans' Court's award of rent against him, stating that "when the occupancy of the decedent's real estate by an estate's beneficiary is unnecessarily prolonged due solely to the improper behavior of the beneficiary occupying the estate, 20 Pa. C.S. §3311 will not be construed to prevent an award of rental following a reasonable period." *Id.* at 7. Thus, even a beneficiary living on the decedent's property at the time of death cannot overstay at least without paying rent.

The only case uncovered by these authors which involved not only an issue of rent but of removing a non-tenant from estate property in which she lived at the time of the owner's death is a non-precedential decision of the Superior

Court in *In re: Estate of Penelope Ann Prebish*, 2018 WL 6804118 (Pa. Super. Ct. Dec. 27, 2018). There, two parents were divorcing when the husband/father died, leaving a wife and 3 adult children. Years later, wife/mother died and son Mark sought to remove daughter Monica as administratrix of their father's estate. In response, she indicated that she was making improvements while she was residing in the disputed property. Daughter Michelle and her husband, as executors of the mother's estate, filed an action in declaratory judgment seeking to have the court declare the property to be part of their mother's estate, and the Orphans' Court agreed. Michelle and her husband then filed a petition for exclusive possession relative to the property, and the Court ordered Monica to vacate in 60 days and to pay rent to the mother's estate for a certain period.

Relying on the first sentence of Section 3311 that excepts real estate occupied by an heir at the time of death with the decedent's consent from a personal representative's right to take possession, Monica refused to vacate unless a proper action in eviction or ejectment was carried through. Rejecting this argument, the Orphans' Court found that it had given her as much time as possible to make arrangements for the sale of the property and that the time had come to allow someone else to do so. The Superior Court found that the record supported the Orphans' Court's determination that removing Monica from the property was necessary to protect the son Mark's rights and that its finding that Monica would otherwise continue to obstruct the ability of Michelle and her husband to sell the property for the benefit of all of their mother's heirs was more than justified by the evidence. *Id.* at *3-4.

Further, relying upon *Bouks*, rather than *Padezanin*, the Superior Court in *Prebish* found that the Orphans' Court did not err in awarding rent against Monica for the period of time in which her dilatory conduct deprived Mark and Michelle of their interests in the property. *Id.* at *5.

Based upon these decisions, filing a Petition pursuant to 20 Pa. C.S. §3311 in the Orphans' Court Division of the Courts of Common Pleas may provide an effective statutory remedy for estate administrators to: (1) obtain possession of an estate's real property from non-tenants and heirs and devisees alike; and (2) secure rent from non-tenants, heirs and devisees occupying that real property, without resorting to costly and protracted eviction or ejectment actions.

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