
How do I Recover Estate Property?

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The immediate period following the death of a loved one is a difficult time. Often loved ones are tasked with planning memorial services, making burial arrangements, and hosting friends and family who wish to convey their final respects to the decedent. Usually, no personal representative of the decedent's estate is appointed until several days or weeks following the loved one's date of death. Accordingly, securing the decedent's property is, understandably, not always top of mind or even possible. In the meantime, however, individuals that feel entitled to share in the decedent's estate may begin to help themselves to the decedent's property, particularly when there is family disharmony. Most commonly, items of tangible personal property like important records, art, heirlooms, furniture, tools, jewelry or automobiles are taken. Other items may also be taken, particularly by individuals with access, including cash, credit cards, and money in bank accounts.

The law provides the executor or administrator of a decedent's estate procedures to remedy this situation. N.C. Gen. Stat. § 28A-15-12 provides that a personal representative of a decedent's estate has the right to bring a civil action to recover the decedent's property. Importantly, this includes the right to require a person reasonably believed to be in possession of the decedent's property to appear before the court and submit to an examination, in the form of a hearing, regarding the property believed to be in the person's possession. The person can be asked, under oath, regarding the whereabouts of the property and, if determined to be in that person's possession or control, the person can be ordered to turn the property over to the personal representative and required to pay the costs of the proceeding.

In our experience, this procedure is usually instituted before the Clerk of Superior Court although the action can be brought in the Superior Court Division of the General Court of Justice. A petition before the clerk requires a short and plain statement of the claim that is sufficiently particular to give the court and the parties notice of the matter at issue and a demand for judgment for relief. The petition is filed by the personal representative in the estate file followed by the issuance of an "Estate Proceeding Summons" to the person named as the respondent in the petition. The summons is generally served on the party by the Sheriff and notifies the respondent that he or she has 20 days to respond to the petition by serving a written response upon the petitioner or the petitioner's attorney. After the 20 day period has expired, the petitioner can schedule a hearing and serve a notice of hearing on the respondent. If the respondent does not show up for the hearing, the clerk may enter an order granting the relief requested by the petitioner which the Sheriff may then generally execute in the same manner as other civil orders.

An action to recover a decedent's property is not limited to natural persons. A corporation, trust, bank or other financial institution that refuses to turnover property of the decedent may also be named as a respondent in such a proceeding. Personal representatives should therefore be aware of their rights and consider using such a claim to recover property wrongfully in possession of the decedent's property.

About the author: Stephen Brown focuses his practice on business formation and structuring, wealth transfer planning, and litigation involving fiduciaries, trusts, estates and guardianships. If you have questions after reading this article, please contact Stephen.

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