

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

KIM E. AYVAZIAN
MASTER IN CHANCERY

CHANCERY COURTHOUSE
34 The Circle
GEORGETOWN, DELAWARE 19947
AND
NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DELAWARE 19980-3734

December 16, 2013

James P. Sharp, Esquire
Moore & Rutt, P.A.
122 West Market Street
PO Box 554
Georgetown, DE 19947

RE: Estate of Ralph A. Gallegan
C.A. No. 8552-MA

Dear Mr. Sharp:

I have reviewed your petition for instructions on how to administer the Estate of Ralph A. Gallegan, in particular, as to the decedent's New Jersey real estate, located at 24 Cornell Road, Toms River, New Jersey ("Cornell Road Property") and in the St. Joseph's Cemetery in Toms River, New Jersey ("Burial Plots"). For the reasons that follow, I recommend that your petition be dismissed without prejudice so that you may seek instructions in the appropriate New Jersey Probate Court through an ancillary administration of the decedent's real property in New Jersey.

You were appointed as successor administrator of decedent's estate and, therefore, have been vested with title to all personal property of the decedent, wherever situated. *See In re Estate of Brown*, 52 A.2d 387 (Del. Ch. 1944). Because decedent's personal property was insufficient to pay the decedent's debts, this Court previously authorized you under 12 Del. C. § 2701 to sell decedent's real property located in Sussex County, Delaware, in order to pay those debts. Now you are seeking instructions as to selling decedent's real property in New Jersey because only five of the seven beneficiaries have executed the Release and Refunding Bond that is necessary to deed the Cornell Road property to the beneficiaries, and because the beneficiaries disagree whether to retain or transfer the Burial Plots.¹

Under New Jersey law, title to real property vests in the heir or devisee automatically and immediately upon the death of the owner, *Egner v. Egner*, 443 A.2d 1104, 1105-11-6 (N.J. Super. 1982), although possession, control and management vests, by statute, in the administrator. *See Pries v. Hugin*, 2009 WL 4725227, at *4 (N.J. Super. A.D. Dec. 7, 2009). That possession, control and management, is subject to the supervision of the New Jersey Probate Court. *See id.*

¹ According to the Petition, the decedent owned five actual burial plots, but each plot can hold the remains of two individuals. Three of the plots are occupied by the remains of decedent, decedent's spouse, and decedent's child. The other seven plots are unoccupied, and the seven beneficiaries apparently cannot agree as to the disposition of the unoccupied plots.

at*3. Therefore, you should consider whether an ancillary estate should be opened in New Jersey in order to control and manage the Cornell Road property.

The transfer of burial plots in New Jersey is controlled by New Jersey law. *See* N.J.S.A. 45:27-28.² You have proposed a method of distribution of the Burial Plots that you believe is fair and equitable to the seven beneficiaries, but this proposal should be reviewed by a New Jersey court, not a Delaware court, in order to ensure that it comports with New Jersey law.

For the foregoing reasons, I recommend in this final report that the petition for instructions be dismissed without prejudice.

Sincerely,

/s/ Kim E. Ayvazian

Kim E. Ayvazian
Master in Chancery

KEA/kekz

cc: Patricia McCaughey
Anna Gallegan
Donna Gonzalez
Thomas Gallegan
Diane Gallegan
Theresa Burd
Dawn Gallegan-Ali

² N.J.S.A. 45:27-28 provides in part that: “(c) After human remains have been buried in a grave or crypt, that grave or crypt shall not be transferred except as follows: (a) Ownership of the grave or crypt may be transferred by will if it is identified specifically in the will rather than by a residuary clause or a general reference to real property. Otherwise, on the death of the owner, ownership shall descend in the order listed below: ... (b) if there is no surviving spouse, to the children per stirpes as equal tenants in common[.]”