

ADMINISTERING AN ESTATE

(Forms are highlighted in bold)

1. How do I become the administrator or executor (sometimes called the personal representative) of the estate?

- Qualifications. If you are named in a Will to act as executor, you will be eligible to serve if you are over 18 years old and are able to perform the duties of a personal representative. If you are not named as executor, or if the decedent did not have a Will, you must have priority to be appointed as administrator (if there is no Will) or Administrator-with-Will-Annexed (if there is a Will but you are not named as executor).
- Priority for Appointment. If there is no Will, or if the Will does not nominate an executor, or if the persons nominated are unable to serve due to death or because they do not want to serve, then persons related to the decedent are entitled to be appointed in a statutory order, starting first with the surviving spouse and second with children. A person who has priority for appointment but does not wish to serve may decline. If you wish to be appointed but there are other family members higher in priority, each one of those persons must decline to serve, in writing.
- The Court. The court with jurisdiction over the administration of estates is usually the Chancery Court but in some counties is the General Sessions Court or the Family Court.
- Filing a Petition. There are different documents for different purposes:
 - An **Affidavit under the Small Estates Act**. It may be used if the estate has a value of \$100,000 or less. It permits simplified administration. This is the only required filing. The court does not enter an order.
 - A **Petition for Administration** is used if there is no Will. After examination of the Petition, the court will usually enter an **Order Appointing Administrator**.
 - A **Petition for Probate of Will** is used if there is a Will. After examination of the Petition, the court will usually enter an **Order Appointing Executor**. (The procedures for a will contest are not addressed here. See, however, the discussion below regarding probate of a will in “solemn form.”)
 - A **Petition for Probate of Will for Real Estate Purposes Only** or an **Application for Appointment of Administrator for Lawsuit** is used if there is only one reason for the administration of an estate. The Court will

usually enter an **Order Probating Will for Real Estate Purposes Only** or an **Order Appointing Administrator for Lawsuit Only**.

- Filing a Petition for Probate. This Petition asks whether you seek probate in *common* form (in which event the heirs and beneficiaries will *not* be served with process so that they may have legal notice to appear at the hearing to determine whether the purported will may be admitted to probate) or *solemn* form (in which event, the heirs and beneficiaries will be served with process).
- Proof of a Will. Either testimony in person before the court or an affidavit from each witness must be used if the Will or Codicil (an amendment to a Will) is not self-proving. A document is self-proving if an affidavit from the witnesses is attached to it at the time it is signed. Tennessee permits “holographic” Wills and Codicils to be probated. They are documents prepared by a testator in his or her own handwriting. Holographic wills do not have to be signed in front of witnesses or notarized. A holographic Will or Codicil may be admitted to probate if the testator's handwriting can be proved by the testimony of at least one witness who was personally acquainted with the testator and has personal knowledge of the testator's handwriting.
- Notice to Heirs or Beneficiaries. Unless a **Petition for Probate of Will** is filed in “solemn form” rather than “common form” (a subject discussed below), no prior notice to beneficiaries is required about the date and time when the court will decide whether to enter an order. (However, heirs and beneficiaries may subsequently challenge your appointment as executor or administrator if they have not received reasonable prior notice of the proceedings where you receive your appointment.) After your appointment, you should give them notice of your appointment and file with the court either an **Affidavit of Notice to Heirs** (if there is no Will and you have been appointed as administrator) or an **Affidavit of Notice to Beneficiaries** (if there is a Will and you have been appointed as executor). This should be done regardless of whether probate was in common or solemn form.
- Letters of Administration or Letters Testamentary. The clerk prepares Letters of Administration (if there is no Will) or Letters Testamentary (if there is a Will). These forms may be given to anyone who needs proof that you have authority to act on behalf of the estate. Each person appointed as a personal representative must sign an oath in order to be issued Letters. (If more than one person is appointed, both or all of them must be issued Letters, usually in the same document.) You can get as many copies as you need at that time or at any later time. Institutions such as banks or title companies generally Letters. Some institutions, such as stock transfer agents, also require that the Letters be submitted within 60 days of the date when they are issued by the clerk.

2. What am I supposed to do after I am appointed administrator or executor by the court? Your primary responsibilities are to:

- If there is a Will: Send complete copies of the Will to those beneficiaries sharing in the residue of the estate and copies of the paragraphs of the Will containing gifts to other beneficiaries.
 - If there is no Will: Send copies of the Letters of Administration to all heirs.
 - Complete and sign the **Application for Release by TennCare** to obtain a release from its potential lien against the assets of the estate. You should do so even if the decedent has not resided in a nursing home and even if TennCare has provided no benefits to the decedent.
 - Marshal assets and file an **Inventory of the Assets** of the estate, unless the filing is excused by the Will, the heirs or the beneficiaries in writing, or the court in its order.
 - Pay debts and liabilities of the estate. Each creditor must file a **Claim of Creditor** against the estate.
 - Pay the income and death taxes of the estate.
 - Distribute the remaining assets to the persons entitled to receive them.
 - File with the court an **Accounting by Executor or Administrator** of the income and expenses of the estate and the distributions made (or to be made) to heirs or beneficiaries. If the Will, the heirs, or the beneficiaries will waive accountings, get them to sign a **Sworn Statement in Lieu of Final Accounting**.
 - Obtain an **Order Closing the Estate** from the court.
3. **How do I marshal assets?** After appointment, the personal representative must marshal, or take possession, of all of the **decedent's** property to be administered as part of the **estate**.

- Obtaining a Tax I.D. Number. Before an estate checking account can be established or existing accounts can be transferred, the personal representative will need to obtain from the Internal Revenue Service a "tax identification number" for himself or herself as personal representative of the decedent's estate. This is done by completing IRS Form SS-4.
- Personal Property. Once a tax identification number has been obtained, cash accounts standing in the decedent's name may be closed and transferred to an estate account in the personal representative's name. If closing the decedent's account would trigger early withdrawal penalties, the registration of the account may be changed to the name of personal representative without closing the account. Stock certificates and brokerage accounts should also be changed to reflect the change in ownership from the decedent to the personal representative so that dividends and earnings can be correctly reported on behalf of the estate.
- Real Property. It is not necessary to record a deed to change title to the decedent's real property in the county where the estate is opened. However, the personal representative should file a certified copy of the Will (if there is one) in the real

property records (the Register's Office in Tennessee) in every other county of every state where the decedent owned real estate. If there is no Will but there is property in another county, it may be advisable to file an **Affidavit of Heirship** in the real estate records. Ask the governmental official in charge of the real estate records about whether and which document should be filed.

4. The Inventory

- Within the time specified by the court, typically three months after appointment, the personal representative must file with the court an **Inventory** of the property as of the decedent's date of death. (If there is a Will, this filing is usually forgiven. But beneficiaries still have the right to receive information about the estate, even if it need not be filed with the court.)
- Be careful to describe the property accurately and completely on the Inventory. Some common problems include: (1) failure to fully describe a mortgage note (including date, interest rate, and duration) and the underlying real property and (2) failure to specify the decedent's interest (100%, 50%, 25%, etc.) in personal property such as a partnership.
- If you discover additional property belonging to the decedent after the Inventory has been filed, you should file a "Supplemental" Inventory. If you discover that any of the items listed on a previous Inventory were incorrect (for example, the account number or legal description was wrong), you should file a "Corrected" Inventory to fix the error.

5. Managing Property, including Paying Debts and Liabilities of the Estate

- What authority do I have to manage the estate assets? You have a wide range of powers to conduct most transactions without having to get the court's approval. Some exceptions are listed below.
- What type of actions do not require prior court approval? As personal representative, you have the power to take the following actions independently:
 - Approve, pay, reject or contest any claims filed against the estate (except for any claim by or against you);
 - Compromise or settle any actions by or against the estate, or release any claims belonging to the estate that you determine are uncollectible;
 - Initiate legal actions for the benefit of the estate or defend actions filed against the estate;
 - Extend, renew or modify the terms of an obligation owed to the estate;
 - Convey or transfer property if necessary to exercise a specific power given to you as personal representative;

- Pay taxes, assessments, or expenses incurred to collect, care for, or administer the property of the estate;
- Exercise any option rights belonging to the estate;
- Hold securities in the name of a nominee or any other form without disclosure of the estate, to allow title to pass by delivery;
- Exercise subscription or conversion rights to securities; and
- Make repairs and improvements to real and personal property.
- What types of actions require a court hearing? Unless waived by the Will or by the heirs or beneficiaries in writing, you must have a hearing and get court approval before you do the following:
 - Pay fees or commissions to yourself as personal representative or to your attorney (if you are represented by an attorney);
 - Buy, sell, lease or otherwise deal with property belonging to the estate to yourself while you are acting as personal representative; or
 - Enter into a settlement or compromise of any claim involving the estate on behalf of yourself personally or your attorney.

6. Creditors' Claims

- What are my responsibilities to creditors? As personal representative, you have a duty to pay the valid claims of creditors who properly file claims with the court clerk. You may take exception to claims that you dispute or that are improperly filed. The court will decide whether your exception is proper. You may refuse to pay claims that are not filed at all. But secured creditors do not have to file claims before foreclosing or repossessing their collateral.
- Who gives notice to creditors? It is the duty of the clerk of the court, within 30 days after the issuance of letters testamentary or letters of administration, to give public notice of the personal representative's qualification by two consecutive weekly notices published in a newspaper of the county in which letters testamentary or of administration are granted.
- Can I pay a debt even if the creditor has not filed a claim? Yes, but only if you are certain both that the bill is valid and that there is enough money in the estate to pay *all* claims in full, including taxes that may be owed. However, if you have any question as to whether the bill is valid or whether you will be able to pay all of the decedent's debts in full, you should wait until the end of the claim-filing period to determine the total amount of creditors' claims filed against the estate.
- Do I need to pay secured creditors if they don't file claims? A creditor like the holder of a home mortgage or a car loan does not need to file a formal claim in order to **enforce** its rights to the secured property, as long as the secured creditor does not pursue any claim against other estate property. You should continue to make mortgage or car payments if there is sufficient money in the estate to make

these payments and pay the other expenses of the estate. If there is not enough money to continue to make regular payments, you should seek the advice or assistance of an attorney to find out what your alternatives are to avoid foreclosure or repossession and protect any equity the decedent or the estate may have in the property.

- A creditor has filed a claim; what do I do now? You must review the claim carefully and either allow or reject the claim, in whole or in part, in writing, within 30 days of receiving the claim. If you reject it, file an **Exception to Claim** with the clerk of the court. The court will enter an **Order Regarding Claim against Estate** after hearing both sides of the case. Of course, the creditor can sign a **Release of Claim against Estate** if the claim is compromised or settled.
- Does the Judge have to approve all creditors' claims? The personal representative has the authority to approve or reject a creditor's claim UNLESS the personal representative or his or her attorney is a creditor of the decedent. If you are the personal representative and you or your attorney has a claim against the estate, you or the attorney should complete and file a **Creditor's Claim**. The clerk will arrange a hearing so you may present the claim to the judge for approval or rejection.

7. Taxes

- Do I need to file tax returns? The taxes to be paid by the personal representative are frequently thought of as only death taxes, i.e., federal estate tax and Tennessee inheritance tax. However, you also may need to file income tax returns for the decedent and the estate. Almost certainly, you will need to retain an accountant or other tax professional who is familiar with the tax requirements that apply to a decedent and his or her estate.
- Final Individual Income Tax Returns. To determine whether federal and state final income tax returns for the decedent are required, you must know the decedent's gross income, marital status, and age at death. If they are due, both the federal and state returns should be marked "FINAL RETURN" and the decedent's name should appear as the taxpayer on the face of the return, indicating that he or she is now deceased and the date of death. In addition, the tax year of the return should be filled in, showing a tax year beginning on January 1 and ending on the date of death, and the word "deceased" written across the top of the return. The personal representative should sign the decedent's final return on the line indicated for the taxpayer, e.g., "John Doe, Executor, under the Will of Richard Roe, deceased." If a joint return is filed, the surviving spouse should also sign the return. The due date for a decedent's final tax return is the same date as during the decedent's life.
- Fiduciary Income Tax Returns. For income tax purposes, a decedent's estate is a separate entity that begins at the decedent's death. Form 1041 must be filed for an estate with a gross income for the taxable year of \$600 or more. A Tennessee Income Tax Return may also be due. If an income tax return is required, the

representative may select either a fiscal year or use the calendar year. Unless a different year is selected, the estate's taxable year is considered to begin the day immediately after the date of death. The estate's income tax return is due on or before the 15th day of the fourth month after the end of its fiscal year or, if the estate is on a calendar year, on or before April 15th.

- Federal and Tennessee Death Tax Returns. A federal estate tax return must be filed on IRS Form 706 for the estate of every U.S. citizen or resident whose gross estate, valued as of the date of death, plus adjusted taxable gifts after 1976, exceeds an exemption. The amount of the exemption is uncertain at this writing but has been as high as \$3,500,000 in recent years. The Tennessee inheritance tax return must be filed for each estate with a gross value exceeding \$100,000, unless filing is excused, and tax must be paid if the value of the estate, after expenses and debts, exceeds \$1,000,000. (Filing of a return is excused if an **Affidavit Regarding Inheritance Tax Return** is filed and an **Order Waiving Filing of Inheritance Tax Return** is entered.) Both the federal and Tennessee death tax returns must be filed within nine months after the date of death unless extensions have been received. The extension of time to file is not given automatically. An extension of time to file does not extend the time for payment of the tax due. An extension of the time to pay must be requested separately if needed. Separate penalties may be assessed for late filing and late payment of the tax due, in addition to interest on the late payments.

8. How are fees determined for the personal representative and attorney?

Neither statute nor judicial decision specifies how to determine fees. All that is required is that they be reasonable. The judge decides what is reasonable, usually in light of the fees customarily charged by other persons for similar services. If the fees are in dispute, the judge will hold a hearing with witnesses. Sometimes the court will have a recommended fee schedule.

9. When can, or must, I close the estate, and how do I do it?

- The personal representative may seek closing when there are sufficient funds available to pay all debts and taxes, the time for filing creditors' claims has expired, and the estate is in a condition to be closed. The personal representative is required, unless the time is extended by a court order, to complete the administration of the estate within 18 months after Letters are issued.
- Closing the estate entails filing with the court an **Accounting by Executor or Administrator** of the income and expenses of the estate and the distributions made (or to be made) to heirs or beneficiaries. If the Will, the heirs, or the beneficiaries waive accountings, the personal representative files instead a **Sworn Statement in Lieu of Final Accounting** signed by each heir or beneficiary.
- An **Affidavit of Notice to TennCare** should be filed with the closing documents if it has not been filed previously.

- The final step is the entry of an **Order Closing the Estate** by the court. After the Order has been approved by the judge and signed, at least one certified copy should be obtained, one for the personal representative's records and another for recording if the estate included real property in another county or state. Tennessee law does not require recording, but some title companies may want it to occur. Distribution of the estate assets in compliance with the court order entitles the personal representative to a full discharge with respect to property covered by the Order. The Order protects the personal representative from subsequent suit for alleged misdeeds during the term of administration. Until the entry of the Order, the administration of the estate is not completed, and the court continues to have power over the personal representative. After discharge, the personal representative should notify the Internal Revenue Service that he or she is no longer acting as a fiduciary for the estate.

Adapted from publications of the Superior Court of Santa Clara County, California.