

North Carolina Probate Survival Guide: Successfully Settling Your Loved One's Estate

Introduction

You've been appointed as "Executor" (officially "Executrix," if you are a female) of someone's Will. Chances are, the person (the "Decedent") is a family member, and instead of dealing with the grief, you have to spring into action to settle your loved one's estate.

The *North Carolina Probate Survival Guide* (the "Guide") is designed to provide you, the Executor, with general information related to settling an estate in North Carolina. The probate process is defined by North Carolina law. The law is the same throughout the State. However, not all counties administer the law in the same way.

This Guide covers information related to formal estate administration¹ where:

1. the Decedent was a North Carolina resident at the time of his/her death;
2. there was a written Will in place at the time of death of the Decedent;
3. the location of the original copy of the will is known; and
4. an Executor is appointed in the Will.

The goal of this Guide is to provide North Carolina citizens who are serving as first-time Executors with a helpful resource during an uncertain and emotional time.

Please Note: This Guide is for informational purposes only and is not meant to replace legal advice about your specific situation. If you have specific questions, call me to set up a time to talk.

North Carolina Probate Survival Guide: Your Roadmap

This Guide outlines your responsibilities as Executor and Personal Representative while discussing 5 phases of the estate administration process.

1. Meeting with the Clerk of Superior Court
2. Beginning Your Duties as Personal Representative
3. Completing the 90 Day Inventory
4. Payment of Debts, Disbursements, and Distributions
5. Accounting and Settlement of the Estate

The entire process can be completed in less than one year, and sometimes in as little as five or six months. It depends on the amount of assets and debts, the number and attitude of beneficiaries, and your available time and effort.

¹ There are situations where a formal administration may not be necessary. For example, the estate may be small, the estate may involve real estate only, the estate may qualify for summary administration, it may qualify for administration by the Clerk of Court or by a Limited Personal Representative.

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I. First Step: Meeting with the Clerk of Superior Court

As Executor, your first two steps are to:

1. Probate the Will (submit it to the Clerk who will determine its validity); and
2. Apply for “Letters Testamentary,” or “Letters,” which will give you the authority to administer the Decedent’s estate.

Once you receive Letters, you will be the “Personal Representative” or “PR.” Make sure to set up a file for all of the documents related to your work as PR.

Schedule the Meeting

The Will should be probated with the Clerk of Superior Court in the county where the Decedent lived at the time of death. You should do so within 60 days of the Decedent’s death. Your failure to do so will allow any Beneficiary, or other interested party of the estate, the right to apply to probate the Will.

- **Deadline!** You should apply for Letters within 30 days of the probate of the Will. If you do not, the Clerk may issue notice for you to do so and/or interested parties may petition the Clerk to deem that you have renounced. (This Guide anticipates that you will have the Will probated and make application for Letters at the same time.)

The primary form is called the “[Application for Probate and Letters](#)” (E-201) and is discussed in detail below. While you are not required to complete the Application before the meeting, you will want to familiarize yourself with it, as well as the forms and documents below, before meeting with the Clerk. All of the forms are in Appendix E of this Guide.

You will need the following documents for your meeting with the Clerk:

- Original Will and Codicil(s)
- Copy of Death Certificate
- Application for Probate and Letters: [E-201](#)
- Estate Action Cover Sheet: [E-650](#)
- Oath: [E-400](#)
- Certificate of Probate: [E-304](#)
- Order Authorizing Issuance of Letters: [E-402](#)
 - (The Order is often referred to as the “Letters”. Ask the Clerk for 3-5 copies of the Letters at the meeting. Some counties will charge a small fee for the copies.)
- Filing Fee: \$120.00 (cash, certified check or money order)

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The two forms below MAY be applicable to your situation:

- Appointment of Resident Process Agent: Only required if you live out of state.
- Bond: If the Will requires a bond, it cannot be waived. However, the Bond is often waived by the Will. If the Bond is not waived by the Will, it can be waived if all heirs and beneficiaries agree. [E-404](#)
 - **Note:** If you live out of state, a Bond will be required and cannot be waived.

The Application for Probate and Letters

The Application for Probate and for Letters includes the components listed below. The Preliminary Inventory, on page 2 of the Application, is the starting point for you as the Personal Representative to identify all the property in the Decedent's estate.

The Preliminary Inventory section is very similar to the [90 Day Inventory Form](#). You should review both forms so that you understand the questions you might want to ask when meeting with the Clerk. The information you include in the Preliminary Inventory may not be complete given time restraints, but you should make a good faith effort and provide the information you have available.

The Application includes the following information for you to fill out:

1. Information about Decedent: Below is a screenshot of the first part of the Application which asks for this information.

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STATE OF NORTH CAROLINA		File No. _____
_____ County		In The General Court Of Justice Superior Court Division Before The Clerk
IN THE MATTER OF THE ESTATE OF: Name, Street Address, City, State, And Zip Code Of Decedent		APPLICATION FOR PROBATE AND LETTERS <input type="checkbox"/> TESTAMENTARY <input type="checkbox"/> OF ADMINISTRATION CTA <input type="checkbox"/> AND ADDENDUM (AOC-E-309)
Social Security No. (last four digits)	County Of Domicile At Time Of Death	
Date Of Death	Date Of Will And Codicil(s), If Any	G.S. 28A-2A-1, -2, -5; 28A-6-1; 28A-12-4 Place Of Death (if different from County Of Domicile)
Name, Street Address, P.O. Box, City, State, And Zip Code Of Applicant		Name, Street Address, P.O. Box, City, State, And Zip Code Of Co-Applicant
Telephone No.		Telephone No.
Legal Residence (County, State)		Legal Residence (County, State)
Name, Street Address, P.O. Box, City, State, And Zip Code Of Attorney		Attorney Bar No.
		Telephone No.

2. **Affirmation:** The Clerk will require you to affirm the following:

- I, the undersigned, applying for probate and for letters in the above estate, being first duly sworn, say that:
- The decedent was domiciled in this county at the time of the decedent's death, or left property or assets in this county, or was a nonresident motorist who died in North Carolina; no other proceeding for probate or for administration is pending in any jurisdiction.
 - The decedent left the paper-writing(s) purporting to be the decedent's Last Will and Testament and codicil(s), dated as shown above.
 - a. I am an executor, devisee, or legatee named in the will, or a next-of-kin or creditor of the decedent.
 b. I am the person entitled to apply for letters or am applying after all persons having prior right to apply have renounced.
 c. I am applying subject to G.S. 28A-6-2(1) and move that all necessary notices be issued.
 d. I am the public administrator appointed by the Court.
 - I am not disqualified pursuant to G.S. 28A-4-2 to administer the estate and have not renounced my right to do so.
 - Following the execution of the will there were no children born to or adopted by the decedent, and the decedent did not thereafter marry or obtain a divorce. *(If the facts are otherwise, state them on an attachment.)*
 - After diligent inquiry, I have determined that the persons listed below are all the persons entitled to share in the decedent's estate. *(If there is a court-appointed guardian for any such person(s), list the guardian's name and address on an attachment.)*

NAME	AGE	RELATIONSHIP	MAILING ADDRESS

3. **Preliminary Inventory:** The Preliminary Inventory pertains to values as of the Decedent's date of death. It will serve as your beginning work on the 90 Day Inventory that is due 3 months after you are appointed. Note that the Preliminary Inventory seeks a lump sum estimation of the total value of all property in each category. The 90 Day Inventory will require a complete itemization and valuation of the Decedent's property. The instructions for Preliminary Inventory are included in Appendix E.

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PRELIMINARY INVENTORY (Give values as of date of decedent's death. Continue on separate attachment if necessary.)		
PART I. PROPERTY OF THE ESTATE		
		Est. Market Value
1. Accounts in sole name of decedent (List bank, etc., each account no., and balance.)		\$
2. Joint accounts <u>without</u> right of survivorship (List bank, etc., each account no., balance, and joint owners.)		
	% Owned By Decedent	
	% Owned By Decedent	
	% Owned By Decedent	
	% Owned By Decedent	
3. Stocks/bonds/securities in sole name of decedent or jointly owned <u>without</u> right of survivorship	% Owned By Decedent	
4. Cash and undeposited checks on hand		
5. Household furnishings		
6. Farm products, livestock, equipment, and tools		
7. Vehicles		
8. Interests in partnership or sole proprietor businesses		
9. Insurance, Retirement Plans, IRAs, annuities, etc., payable to Estate		
10. Notes, judgments, and other debts due decedent		
11. Miscellaneous personal property		
12. Real estate willed to the Estate	\$	
13. Estimated annual income of Estate		
(Base bond on this amount, if applicable.) TOTAL PART I.		\$

4. Non-Estate Property: Certain property is not considered part of the probated estate, but may be brought in to the estate to pay estate debts. The Preliminary Inventory asks for a summary of non-estate property.

The screenshot below outlines what is specifically asked for on the form. Typical examples of non-estate property that MAY be brought in to pay debts include:

- Joint Bank Accounts with Right of Survivorship: The account is jointly owned by the Decedent and some other person or entity. At the date of death of the Decedent, the joint owner becomes the sole owner.
- Payable on Death Bank Accounts: These accounts pass to the named beneficiary at the time of death of the Decedent. As opposed to the Joint Account, the beneficiary is not a joint owner, but becomes the owner at the time of death of the Decedent.
- Stock/Bonds/Securities Jointly Owned with Right of Survivorship or Registered in Beneficiary Form and Automatically Transferred at Death of Decedent: Ownership passes to the joint owner or beneficiary at the time of Decedent's death.
- Real Estate that is not bequeathed to the estate or directed by the will to be sold: Ownership passes to the heir at the time of Decedent's death.

5. Non-Estate Property that usually CANNOT be used to pay debts of the estate includes:

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- Real Estate owned as Tenants by the Entirety: Real Property owned by husband and wife passes to the surviving spouse at time of Decedent's death.
- Life Insurance, Retirement Plans, IRAs, etc.: Unless the estate is the beneficiary, the proceeds pass to the beneficiary outside of the estate.
- Wrongful Death Claim: Where the death of the Decedent was caused by the wrongful act or negligence of another who may be liable in an action brought by the PR.

PART II. PROPERTY WHICH CAN BE ADDED TO ESTATE IF NEEDED TO PAY CLAIMS	
1. Joint accounts with right of survivorship <i>(List bank, etc., each account no., balance, and joint owners.)</i>	\$
2. Stocks/bonds/securities registered in beneficiary form and immediately transferred on death or jointly owned with right of survivorship	
3. Other personal property recoverable (G.S. 28A-15-10)	
4. Real estate owned by decedent and not listed elsewhere	
TOTAL PART II.	\$
PART III. OTHER PROPERTY	
1. There <input type="checkbox"/> is <input type="checkbox"/> is not entireties real estate owned by decedent and spouse.	
2. There <input type="checkbox"/> are <input type="checkbox"/> are not Insurance, Retirement Plans, IRAs, annuities, etc., payable to named beneficiaries.	
3. There <input type="checkbox"/> is <input type="checkbox"/> is not a potential claim for wrongful death arising under G.S. 28A-18.2.	

You will also need to complete the Oath/Affirmation which confirms that you believe the writing to be the Decedent's Will and that you will execute the Will by first paying the Decedent's debts and then the Decedent's legacies. [E-400](#).

At the end of this meeting, the Clerk will provide you with the Certificate of Probate and several certified copies of the Letters. This will be the official date that you are appointed as Personal Representative of the estate, and it starts the clock running on several deadlines regarding the administration of the estate which are discussed later in this Guide.

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II. Beginning Your Duties as Personal Representative

After Letters are issued by the Clerk, it's time to begin the process of settling the estate.

As the Personal Representative, you have 3 primary duties:

1. Identify, locate, and collect all property owned by the Decedent at the time of death.
2. Determine valid debts and pay them, including applicable taxes.
3. Distribute the remaining property as directed by the Will and North Carolina law.

You are also under a general duty to settle the estate as expeditiously and with as little sacrifice of value as is reasonable under all of the circumstances. See Appendix D for a compilation of your PR powers and liabilities.

Your efforts in the first month should be focused on the items listed below.

EIN (Federal Identification Number): Request the EIN to open an estate bank account and take care of other obligations. Apply for an EIN on the [IRS Website](#).

Notification of Fiduciary Relationship: Submit [IRS Form 56](#) along with a certified copy of the Letters. This form allows the Federal Government to communicate with you as PR when dealing with tax filings. This form and the [instructions for completing it](#) are in Appendix E.

- Note: When the estate is closed, you should notify the IRS of the ending of the fiduciary relationship by filing a Form 56.

Open Estate Bank Account: You'll need the EIN, a copy of the death certificate, and Letters to open this account.

Safe Deposit Box: If you know that the Decedent had a safe deposit box, you should arrange to make an inventory of the box immediately. The inventory will take place at the bank. A representative of the Clerk and a bank representative will need to be present for the inventory. The Clerk's presence may not be necessary in certain situations. You should contact the Clerk before proceeding with the inventory.

Mailing Address: Update the Decedent's mailing address to yours.

Discontinue Utilities: Unneeded utility services should be discontinued.

Claim for Wrongful Death: If there may be a potential claim for wrongful death, you should consult with an attorney. There are strict deadlines involved in filing a lawsuit in some wrongful death cases.

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Wrongful death claims usually arise when the Decedent passed under unusual or questionable circumstances, such as an auto accident, medical malpractice or other situations involving the wrongdoing of another that may have caused the Decedent's death.

Protect Real and Personal Property: Real property includes land and immovable attachments (buildings/houses) to the land. Personal property is everything else. As you identify the Decedent's property, steps should be taken to protect it. Insurance should be maintained on houses, automobiles, boats and other significant assets. You may need to change the loss payee on the insurance policies. Smaller items of value should be secured and protected.

Property in Other Jurisdictions: If the Decedent left real property in another state, an ancillary administration will be required in that state. You will want to contact the Clerk of Court in the other state to determine whether you can administer the estate as an out of state PR. If you cannot, you may need to retain an attorney licensed to practice in that state.

Gather Asset/Debt Information: Review [Form E-505](#) and gather the following to prepare for 90 Day Inventory:

- Automobile Titles
- Copies of all Recorded Deeds
- Bank Statements: For the most recent few months before death for all accounts: Savings, Checking, Money Market, etc.
- Credit Card Statements
- Mortgage Documentation
- Loan Documentation
- IRA Statements: For the most recent few months before death.
- Brokerage and Stock Statements: For the most recent few months before death.
- All Stock Certificates showing Stocks owned by Decedent.
- All Bond Certificates showing Bonds owned by Decedent.
- All Life Insurance Policies pertaining to the life of Decedent.
- All Life Insurance Statements: For the most recent few months before death.
- All Life Insurance Beneficiary Designations
- All Funeral Expense Invoices
- All Invoices for outstanding medical expenses of Decedent
- Documentation showing business interests of Decedent: Corporate Book, Partnership Agreement, etc.
- Federal and State Tax Returns from most recent and back to 5 years before death.
 - Note: These returns may assist you in identifying assets.

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The documents listed above should also help you to determine whether the estate is solvent. As you move forward, you should be getting a better idea of whether the estate can pay all outstanding debts.

Determine Value of Non-Estate Assets: Although these assets may not be part of the estate for purposes of your probate administration, you should obtain the value of the assets for tax purposes.

Government Benefits: Some benefits terminate at death and some benefits should be activated at death. Pensions may end at death. Social Security payments may end and be transferred to another. North Carolina State Employees Death benefit may need to be paid.

Publish Notice to Unknown Creditors: You may not know who they are, but you have to make an attempt to find them. You must notify all persons, firms and corporations having claims against the Decedent to make claims to you within 3 months of the first day the notice is published. The notice must provide your mailing address. The notice must be published once a week for four consecutive weeks in a newspaper qualified to publish legal advertisements in the county of the estate administration. You should check with the newspaper to confirm it is qualified to publish legal advertisements. A sample notice is included in Appendix A of this Guide.

Notify Known Creditors: You are required to notify known creditors in writing of the Decedent's death including their right to assert a claim against the estate for the debt.

- **Deadline!** This must be done within 75 days of your appointment as PR.

Meet with a CPA/Tax Professional: You can be held personally liable for failure to file the appropriate tax forms and reports. If you haven't already, plan to meet with a CPA or other professional to address tax returns that may be required, tax implications for IRA accounts, pensions and other types of retirement accounts.

- **Deadline!** North Carolina State Inheritance and Estate Tax returns are due 9 months after your appointment as PR.
- **Deadline!** Decedent's final personal Federal and State income taxes are due on April 15 of the year following Decedent's death.

Important Information Regarding a Surviving Spouse: There are 3 rights available to a Surviving Spouse of which you should be aware as PR.

1. **Year's Allowance:** The Decedent's Surviving Spouse may apply for a Year's Allowance using the "Application and Assignment Year's Allowance" ([E-100](#)). The application must be

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in writing and signed by the Surviving Spouse. The Surviving Spouse has up to one year from the date of death of the Decedent to file the application.

You should see that the Year's Allowance is assigned within 10 days after the Surviving Spouse files the application. The application should be served on you at the time that it is filed.

- **Note:** In some situations, children of the Decedent may apply and qualify for a Year's Allowance.
2. **Right to Seek Life Estate:** Decedent's Spouse may seek a life estate interest in lieu of an elective share. This amounts to a life estate in one third in value of all the real estate of which the Decedent was seized and possessed at any time during the marriage.
 - **Deadline!** Spouse must file for life estate within 1 month of the expiration of the Notice to Creditors.
 3. **Right to Elective Share:** Decedent's Spouse may choose to receive an elective share of the estate if the share bequeathed to the spouse does not amount to a certain percentage of Decedent's assets. Before Beneficiaries can receive their distributions, the Spouse must either make the election or sign a waiver of the right of election.
 - **Deadline!** Spouse must file for elective share within 6 months of the appointment of the PR.

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III. Completing the 90 Day Inventory

Once you have completed the immediate action items outlined in Section II, your top priority as PR is completing the 90 Day Inventory.

The 90 Day Inventory must be filed with the Clerk of Court 90 days from the date you were appointed. You should file two additional forms at that time:

1. **Affidavit of Notice to Creditors:** This Affidavit is confirmation that you complied with the Notice requirements discussed in the previous section. [E-307](#).
2. **Estate Tax Certification:** [E-212](#).

Potential Litigation Pitfall

Beneficiaries who review the 90 Day Inventory (once it is complete) may complain that you have not properly listed all of the property owned by the estate. A claim of an incomplete inventory can grow into claims of theft, commingling of funds, and other wrongdoing.

Sometimes, it can result in the Beneficiaries or other interested parties seeking your removal as PR. The potential fees and costs associated with a removal hearing can deplete estate and personal assets.

If you have any questions about whether an item should be listed on the inventory, it's best to consult with an attorney.

Claims from Creditors: You may receive claims from creditors. You will need to decide whether to accept or reject the claims. After the expiration of the 3-month deadline for notice to creditors, you will want to account for all valid debts and determine whether the estate has sufficient assets to pay the debts. If it does not, you will want to consider whether there is appropriate non-estate property available for sale to pay the claims.

Remember, though you may begin to receive claims from creditors, I recommend not paying any claims until after the deadline for making a claim has passed.

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IV. Paying Debts, Disbursements, and Distributions

Once the 90 Day Inventory is filed, take a break. Your job for the estate is tedious and emotionally draining. Go out to your favorite restaurant, take a weekend beach trip. Whatever it is that recharges your batteries, do it.

You should now have a good idea of what property was owned by the Decedent at the time of death and what assets may be available to pay debts of the estate.

You will want to decide whether you want to receive a commission for the work you have performed on behalf of the estate. See below for an explanation of how the amount of the commission is determined.

At this point, you should be dealing with paying the administrative costs and debts of the estate. Expenses such as insurance premiums, utility costs, storage fees, taxes and other administrative costs should be paid as they become due.

After payment of the costs and expenses of administration, *including the Year's Allowance* and your commission, you must pay claims against the estate in a specific order.

First are claims that have a lien on the property. Next are funeral expenses, followed by costs for a gravestone and a burial place, followed by Federal taxes, then State taxes, followed by docketed judgments in force at time of Decedent's death, then wages due to Decedent's employee(s), followed by an equitable distribution claim, and then all other claims.

For a more exhaustive and explanatory list, see Appendix B.

Personal Representative Commission: You should petition the Clerk for approval of a commission before making distributions.

In determining the amount of the commission, the Clerk is supposed to consider the time, responsibility, trouble and skill involved in the management of the estate.

The amount is not supposed to exceed five percent (5%) of the amount of receipts, including:

- 1) The value of all personal property when received, and
- 2) The amount of expenditures made in accordance with law.

For example, if the Clerk determines that a PR should receive the full 5% and the PR gathered property valued at \$100,000.00, the PR would be entitled to receive \$5,000.00. Further, if the PR also disbursed \$50,000.00 in paying claims and taxes, the PR would be entitled to an additional \$2,500.00. The total amount of commission would be \$7,500.00.

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For more information on PR Commissions, see Appendix C.

Distribution to Beneficiaries (Devisees): After the administrative costs and debts, including taxes are paid, what remains is called the “net estate.” You will distribute the net estate pursuant to the terms of the Will and North Carolina law. You should obtain a signed receipt for all distributions using [Form E- 521](#).

Also, be sure that the renunciations or waiver of the right to renounce have been signed by the Decedent's spouse and Beneficiaries.

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V. Accounting and Settlement of the Estate

If you settle the estate within one year, you will file a Final Account. If you do not settle within one year, you will need to file an Annual Account. Both types of accountings use the same form, "Account" [E-506](#).

The Accounting will include Receipts, Disbursements and Distributions.

- **Receipts** will document loans to the estate for the purpose of paying claims, and gains from the sale of personal property and real property willed to the estate that has been sold.
- **Disbursements** will document the debts and/or administrative expenses. You will need to provide copies of receipts, cancelled or imaged checks or other satisfactory detailed proof of payments.
- **Distributions** include proof of distribution of the net estate. (Signed receipts by beneficiaries, cancelled or imaged checks, or other satisfactory detailed proof of payments.)

An Annual Accounting will also include assets remaining in the estate. These can include investments made, monies held in bank accounts, other personal property and real estate willed to the estate that has not been sold.

Settlement

After you file the Final Accounting with the Clerk, she/he will approve the Accounting. If you do not have sufficient documentation accompanying the Final Accounting, the Clerk may require that you submit the proper paperwork before the estate can be closed.

When the estate is closed, your discharge from further duties and liabilities as PR will be shown on the Final Account. This discharge, however, does not release you from any liabilities for breach of duty during your time as PR.

Congratulations!

You have completed the administration of your loved one's estate. Hopefully, you were able to follow the Decedent's wishes and keep the Beneficiaries and the Clerk relatively satisfied at the same time.

If you have any questions, feel free to contact me at clayton@claytonkrohnlaw.com or at 336-282-4191.

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Appendix A

Sample Notice to Creditors

ESTATE OF (Name of Decedent)

NOTICE TO CREDITORS

The undersigned having qualified as Personal Representative of the Estate of _____, deceased, of _____ County, North Carolina hereby notifies all persons, firms, and corporations having claims against the Estate to present such claims to the undersigned at the address below on or before the _____ day of _____, 20____, (**The date should be 3 months from the first date of publication**) or this notice will be pleaded in bar of their recovery. All persons, firms and corporations indebted to the estate will please make immediate payment.

This the _____ day of _____, 20_____.

(Name of Personal Representative), Personal Representative

(Address of Personal Representative)

Dates of Publication: _____, _____, _____, _____.

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Appendix B

Order of Payment of Claims

After payment of costs and expenses of administration, the claims against the estate of a Decedent must be paid in the following order:

- First class: Claims which by law have a specific lien on property to an amount not exceeding the value of such property.
- Second class: Funeral expenses to the extent of three thousand five hundred dollars (\$3,500). This limitation shall not include burial place or gravestone. This is a limit for purposes of preferential treatment. It does not mean that is a limitation on reasonable funeral expenses which may be incurred.
- Third class: Costs associated with gravestones and reasonable costs for the purchase of a suitable burial place to the extent of one thousand five hundred dollars (\$1,500). This is a limit for purposes of preferential treatment. It does not mean that is a limitation on reasonable costs for the gravestones and burial place which may be incurred.
- Fourth class: Federal dues, taxes and other Federal claims.
- Fifth class: State dues, taxes and other State claims.
- Sixth class: Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the Decedent at the Decedent's death. The Department of Health and Human Services is a sixth-class creditor for purposes of determining the order of claims against the estate; provided, however, that judgments in favor of other sixth-class creditors docketed and in force before the Department seeks recovery for medical assistance shall be paid prior to recovery by the Department.
- Seventh class: Wages due to any employee employed by the Decedent, which claim for wages shall not extend to a period of more than 12 months next preceding the death; or if such employee was employed for the year current at the decease, then from the time of such employment; for medical services within the 12 months preceding the decease; for drugs and all other medical supplies necessary for the treatment of such Decedent during the last illness of such Decedent, said period of last illness not to exceed 12 months.
- Eighth class: A claim for equitable distribution.
- Ninth class: All other claims.

If the estate is not sufficient to pay all of the creditors in every class, you should pay in full those classes of creditors for which there is sufficient money, starting with those at the top of the priority list. Then, you should distribute the remaining money proportionally among each creditor of the next highest class.

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Appendix C

Additional Information Regarding Personal Representative Commissions

Personal Representatives are entitled to a commission related to their work settling the estate. The amount is in the discretion of the Clerk but will not exceed five percent (5%) of the amount of receipts, including: 1) the value of all personal property when received, and 2) amount of expenditures made in accordance with law.

In determining the amount of the commissions, the Clerk shall consider the time, responsibility, trouble and skill involved in the management of the estate.

For example, if the Clerk determines that a PR should receive the full 5% and the PR gathered property valued at \$100,000.00, the PR would be entitled to receive \$5,000.00. Further, if the PR also disbursed \$50,000.00 in paying claims and taxes, the PR would be entitled to an additional \$2,500.00. The total amount of commission would be \$7,500.00.

The above formula does not apply if:

1. The Will specifies a stipulated amount or method or standard for determining the compensation for the services rendered by the PR. However, if the Will provides a set amount or a method to calculate your commissions and payment of those commissions would cause the estate to be unable to pay all claims against the estate, then the commissions shall be limited to no more than 5% of the receipts and expenditures.
2. The Will provides that the PR is to receive "reasonable compensation" and the PR and the Beneficiaries consent in writing to what is reasonable compensation.

If the gross value of an estate is two thousand dollars (\$2,000) or less, the Clerk may fix the commission to an amount that the Clerk deems just and adequate.

Where real property is sold to pay debts or devises, the commission shall be computed only on the proceeds actually applied in the payment of debts or devises.

The Clerk may allow commissions from time to time during the course of the administration, but the total commissions allowed shall be determined on final settlement of the estate and shall not exceed 5% as noted above.

The PR will want to report any commissions received to the IRS as income via a 1099 Form.

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Appendix D

Powers and Liabilities of a Personal Representative

As PR, you are a fiduciary who, in addition to specific duties, is under a general duty to settle the estate as expeditiously and with as little sacrifice of value as is reasonable under all of the circumstances.

You are to use the authority and powers conferred upon you by law, by the terms of the will, by any order of court in proceedings to which you are a party, and by the rules generally applicable to fiduciaries, for the best interests of all persons interested in the estate, and with due regard for their respective rights.

As PR, you must identify and gather the assets of the estate to determine the value of the estate. As soon as you are possessed of assets over and above the other costs of administration of the estate, you must pay the Year's Allowances if application has been made by the surviving spouse and/or qualifying children. The applicable statute provides that the PR may pay such other claims and charges as he or she deems in the best interest of the estate if the total assets are sufficient to pay all claims and charges against the estate. It will likely be difficult to accurately determine the total assets of the estate until you have completed the identification of debts and assets. You should also keep in mind that there may be a Federal or State tax liability. Accordingly, you should not pay any creditors' claim until after the deadline for making a claim has passed.

Below is a list showing the powers and the potential liabilities of the PR.

Powers of a Personal Representative: This list is not exhaustive, but contains what I believe are the more important powers.

Except as qualified by express limitations imposed in a will of the Decedent or a court order, you have the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of the estate. You are supposed to use the power to settle and distribute the estate in a safe, orderly, accurate and expeditious manner. Below are some, but not all, of the powers you possess in your role as PR.

1. To take possession, custody or control of the personal property of the Decedent unless to do so is not necessary for purposes of administration, the property may be left with or given to the presumptive devisee. (Beneficiary under the will).
2. To take possession, custody or control of the real property of the Decedent if the personal representative determines such possession, custody or control is in the best interest of the administration of the estate. Unless the real property is devised to you or the will directs

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you to sell the real property, you must engage in a specific set of tasks to be allowed to take real property into your possession, custody or control.

3. To receive assets from other fiduciaries or other sources.
4. To complete performance of contracts entered into by the Decedent or to refuse to complete such contracts as you determine to be in the best interests of the estate.
5. To deposit funds of the estate into a bank account.
6. To make any form of investment allowed by law with funds of the estate, if the funds are not needed to meet debts and expenses immediately payable and are not immediately distributable, including money received from the sale of other assets.
7. To abandon or relinquish all rights in any property when, in your opinion, the opinion it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit to the estate.
8. To insure, at the expense of the estate, the assets of the estate in the personal representative's possession, custody or control against damage or loss.
9. To renew obligations of the Decedent for the payment of money.
10. To advance your own money for the protection of the estate, and for all expenses, losses and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets. For such advances, with any interest, you shall have a lien on the assets of the estate as against a devisee or heir.
11. To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the estate.
12. To pay taxes, assessments, your own compensation, and other expenses incident to the collection, care, administration and protection of the assets of the estate in your possession, custody or control.
13. To employ persons, including attorneys, auditors, investment advisors, appraisers or agents to advise or assist you in the performance of the administrative duties.
14. To continue any business or venture in which the Decedent was engaged at the date of the Decedent's death, where such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the Decedent's interest in such business.

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15. To provide for your exoneration from personal liability in any contract entered into on behalf of the estate.
16. To maintain actions for the wrongful death of the Decedent and to compromise or settle any such claims, whether in litigation or not.
17. To maintain any appropriate action or proceeding to recover possession of any property of the Decedent, or to determine the title thereto; to recover damages for any injury done prior to the death of the Decedent to any of the Decedent's property; and to recover damages for any injury done subsequent to the death of the Decedent to such property.
18. To purchase at any public or private sale of any real or personal property belonging to the Decedent's estate or securing an obligation of the estate as a fiduciary for the benefit of the estate when, in your opinion, it is necessary to prevent a loss to the estate.
19. To pay or satisfy the debts and claims against the Decedent's estate in the order and manner prescribed by law.
20. To exercise such additional lawful powers as are conferred upon you by the will.

Liabilities of a Personal Representative

Property of Estate

You are liable for and chargeable in your accounting with all of the estate of the Decedent which comes into your possession at any time, including all the income therefrom. You are not liable for any debts due to the Decedent or other assets of the estate which remain uncollected without your fault. Except for commissions, you are not entitled to any profits caused by an increase in values of any part of the estate. As long as you are not at fault, you are not liable for a decrease in value or destruction of any part of the estate.

Non-Estate Property

You are liable to the owner of non-estate property which comes into your possession at any time if you received the property because of a lawful duty on you as PR. You are also liable if you commingle non-estate property with property of the estate.

Breach of Duty

You are liable for any loss to the estate arising from your embezzlement or commingling of the estate with other property.

You are liable for loss to the estate through self-dealing.

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You are liable for any loss to the estate from wrongful acts or omissions of a joint personal representative if you could have prevented the acts or omissions by the exercise of ordinary care.

You are liable for any loss to the estate arising from your failure to act in good faith and with such care, foresight and diligence as an ordinarily reasonable and prudent person would act with the ordinarily reasonable and prudent person's own property under like circumstances.

If the exercise of power concerning the estate is improper, you are liable for breach of fiduciary duty to interested persons for resulting damage or loss to the same extent as a trustee of an express trust.

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Appendix E

Forms Referenced

Forms are listed below and arranged in the order in which they appear in the Guide.

AOC E 201	Application for Probate and Letters
AOC E 201 (Instructions)	Instructions for Application for Probate and Letters
AOC E 650	Estate Action Cover Sheet
AOC E 400	Oath/Affirmation
AOC E 304	Certificate of Probate
AOC E 402	Order Authorizing the Issuance of Letters
AOC E 404	Waiver of Bond
IRS Form 56	Notice of Fiduciary Relationship
IRS Form 56 (Instructions)	Instructions for Notice of Fiduciary Relationship
AOC E 505	90 Day Inventory
AOC E 307	Affidavit of Notice to Creditors
AOC E 212	Estate Tax Certification
AOC E 521	Receipt for Distributions
AOC E 506	Accounting (Annual and Final)