

INFORMATION GUIDE FOR PERSONAL REPRESENTATIVES OF ESTATES

The guide is designed to provide Personal Representatives of probate estates with some information to help them do the job better. Most people are unfamiliar with the duties of a fiduciary, such as agent or a Personal Representative. A fiduciary owes a high duty to the person upon whose benefit the fiduciary acts. That duty must come first in all matters related to handling matters as a fiduciary. A Personal Representative owes the highest duty recognized by law to the person upon whose benefit the Personal Representative acts.

While this guide speaks in terms of the Personal Representative of a probate estate, same or similar principals apply to other fiduciaries such as Trustees, Agents under a Power of Attorney, and Court Appointed Guardians and Conservators. The Personal Representative is also commonly referred to as the Executor, Executrix, Administrator or Administratrix.

The information contained herein is for informational purposes and is not intended to be legal advice. The relationship between the Personal Representative of a probate estate and the lawful creditors and beneficiaries of the estate requires a great deal of care and due diligence on the part of the Personal Representative. Keep in mind that these guidelines are general in nature, and are here to help you as the Personal Representative fulfill your duties. If you have specific questions, you should seek the advice of your attorney.

No one can be forced to accept the position of Personal Representative. However, if you accept the position, you must also accept the responsibility that goes along with it. You must take this position and its duties seriously.

As personal representative you should immediately discuss the statutory procedures and responsibilities regarding the administration of this estate with your attorney. If you feel you may have difficulties performing your duties, you should let your attorney know this information immediately. Do not delay in notifying your attorney of any problems or concerns as this may result in very serious consequences. You should not contact the Clerk's office to discuss any legal matters involving the estate. The Clerk's Office is not allowed to provide legal advice. For any legal information, you should always consult your attorney.

Your attorney represents your interests as personal representative. This arrangement continues until the estate is closed, the attorney withdraws or is substituted.

I. Fiduciary Duties of the Personal Representative

As a Personal Representative, you have certain duties to perform, and there are certain rules that you must follow. These few pages are intended to provide you a general idea of what is involved in being a Personal Representative. You may be confronted with questions and problems beyond the scope of a brief explanation such as this. If in doubt you should consult your attorney.

Fiduciary law does not demand absolute perfection in judgment, but it does demand absolute loyalty, absolute honesty, and absolute disclosure, even if that disclosure hurts. Fiduciaries, such as Personal Representatives, are treated differently by law. A quote from Justice Benjamin Cardozo (a former United States Supreme Court Justice) is in order:

Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A (fiduciary) is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions. . . . Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. . . .

If you breach your duties to the beneficiaries of the estate you may be held personally liable for any damages or losses of the beneficiary caused by the breach.

Duty of Loyalty. As a Personal Representative you have an duty of absolute loyalty to the estate and its beneficiaries. You must act in the interests of the estate and the beneficiaries. Self dealing to the detriment of the estate is not permitted. You cannot purchase estate property without consent all other beneficiaries and/or court approval. For transactions involving estate property, always consult your attorney to make sure that the transaction is consistent with your duties and obligations.

Duty to act Prudently. You have a duty to exercise reasonable care, diligence and prudence in the administration of the estate. You should take appropriate steps to preserve estate assets and use reasonable care and skill in investing estate assets. Assets should not be placed in speculative investments. Professional financial advisor or certified public accountant may be needed to determine appropriate investment of estate assets.

You must make sure that estate property such as automobiles, residences or buildings are properly insured. You should have an insurance agent review the insurance coverage on the decedent's property to make sure that the property is properly insured.

Pay particular attention to the liability and casualty insurance on buildings, residences, other structures and automobiles. If a residence or other building is not occupied, be sure that the agent prepares the insurance to include the unoccupied coverage. You may also need to change locks on a residence or other building to secure the structure and its contents.

II. Opening the Estate Administration

After the proper pleadings are prepared, a hearing is scheduled before the Probate Judge to formally appoint you as the Personal Representative for the estate. Once the hearing is completed, you will take your Oath that you will properly perform your duties as the personal representative of the estate to the best of your ability and the Clerk's Office will issue you Letters of Authority, also known as either Letters Testamentary or Letters of Administration.

Initial filing fees will be paid at the time of filing. In Rutherford County the filing fees are approximately \$275.00. Any accrued court costs are expected to be paid annually or at the end of the estate administration. If bond is not waived, you will be required to post an appropriate bond with the Probate Clerk.

Expense for newspaper publication of notice to creditors must also be paid at the time of filing. In Rutherford County, local newspapers of general circulation charge approximately \$125 - \$130 for the publication. The Clerk's Office handles this transaction for you and an additional separate check, made payable directly to the paper is required at that time.

III. Administering the Estate

Creditors and Claims. One of the primary benefits of probating an estate is to implement the time limitations for filing claims against the estate. In Tennessee, properly notified creditors have four months from the first date of publication of Notice to Creditors to file their claims. In certain circumstances, this period may be extended up to one year after the date of death of the decedent.

A copy of the Notice to Creditors must be mailed or delivered to all known (actual) creditors or any creditors who are reasonably ascertainable, otherwise, legal problems may develop. Be sure to provide your attorney all information regarding any bills, debts or other unpaid or disputed obligations of the decedent. Your attorney will use this information to notify creditors.

If a claim is filed against the estate, the Clerk will mail your attorney a copy of the claim. You should then consult your attorney as to how you want to proceed regarding the claim, as there are many legal issues to consider. When closing the estate, it is necessary to verify that all claims have been paid, released, settled or adjudicated. A cancelled check indicating that a claim has been paid can only be used if it is payable

and endorsed for the exact amount of the claim. You will need to bring the Clerk the original cancelled check as it must be verified. Otherwise, it will be necessary for you to contact the claimant and ask them to release their claim. If the claim was settled or adjudicated, an Order must be entered regarding the claim.

Consult your attorney regarding payment of lawful creditors of the estate.

Estate Bank Account. You may need to establish an estate bank account with a financial institution which either returns the original cancelled checks to you or provides you with imaged copies of the checks. The imaged versions which banks now provide with the monthly statements may be used in lieu of the original checks. If your financial institution cannot provide you with either the cancelled checks or imaged copies, it will be necessary to go to another. Never use Cashier's Checks to conduct estate business. A federal tax identification number for the estate is required to open the estate account. Consult your attorney for information regarding the opening and management of the estate account.

Inventory. Within sixty (60) days of your appointment as personal representative, you must file an Inventory of the estate's assets pursuant to T.C.A. 30-2-301(a), unless the filing of the Inventory is waived by the Will or all of the residuary distributees or legatees agree to waive the filing of the Inventory by a written statement to the Court. A copy of the Inventory must be forwarded to all interested parties of the estate and a Certificate of Service should be attached to it. Even though the filing of the Inventory may be waived, you should still prepare and maintain an accurate Inventory in the event one is ever requested. An Inventory is also required to determine tax liability. Consult your attorney for information regarding the Inventory.

Income Taxes. A final income tax return for the decedent must be filed for the tax year of his or her death. The estate may also be required to file an income tax return if it generates income after the death of the decedent. Tax matters can be complicated and involve time limitations and other restrictions. Therefore, you must discuss these matters at the outset with your attorney. Other professionals such as a certified public account may need to be retained as well.

Death Taxes. Depending on the value of the decedent's estate, federal and/or state death tax returns may be required. Tax matters can be complicated and involve time limitations and other restrictions. Therefore, you must discuss these matters at the outset with your attorney. Other professionals such as a certified public account may need to be retained as well.

For death tax purposes, all assets owned by the decedent at the date of death are included in the gross estate. This includes probate and non-probate assets, life insurance proceeds on life insurance owned by the decedent, individual and joint accounts in which the decedent had any ownership interest, and any other asset in which the decedent had an ownership interest.

Generally, for decedent estates having a gross value of under \$1,000,000, the long form Tennessee inheritance tax return need not be filed and no Tennessee inheritance tax is due. Nevertheless, Tennessee decedents having a gross estate of less than \$1,000,000, must usually file a short form Tennessee inheritance tax return to establish that no inheritance tax is due. For Tennessee estates having a gross value of \$1,000,000 or more, the long form Tennessee inheritance tax return must be filed.

Annual Accountings. If the estate remains open over fifteen (15) months, Annual Accountings must be filed with the Clerk, unless the Will waives the filing of an Accounting or all the residual distributees or legatees agree to waive the filing of the Accountings by a statement to the Court. A copy of all Annual Accountings must be mailed or delivered to all interested parties of the estate and a Certificate of Service must be attached to it. You should consult your attorney when filing any Accounting with the Clerk.

Please keep in mind that even if the filing of the inventory and accountings has been waived, you have a duty to maintain accounting records of all estate transactions, receipts and disbursements. These records are needed so that you can provide the beneficiaries information on the status of the estate. This information is also needed to prepare tax filings, to determine distributions to beneficiaries and to close the estate. In short, accurate records will enable you to do your job much more effectively and will limit your exposure to personal liability.

Distributions to Beneficiaries. Beneficiaries should sign a receipt acknowledging receipt of any estate property. To avoid problems, do not distribute any estate property to beneficiaries without prior coordination with your attorney.

When specific bequests made in a Will are honored, you should ask the competent adult recipient of the bequest to acknowledge their receipt in writing and file the receipt with the Clerk as a Specific Bequest Receipt. Cancelled checks indicating that a specific bequest has been paid and received are allowable only when the Clerk can verify the endorsement.

Statutory and Court-Ordered Deadlines. Failure to timely perform statutory duties may result in "Notices" and "Citations to Appear" being either mailed or served on you. The Court may also issue an "Order for Show Cause" requiring you to appear in court for failure to perform your duties. Failure to properly account for the assets over which you have been appointed may also result in the Court ordering a judgment against you for the value of those assets, making you personally responsible. The court costs and legal fees for these procedures may also be assessed against you.

IV. Closing the Estate Administration

Pursuant to T.C.A. 67-8-420(a), a copy of the tax receipt or certificate from the Tennessee Department of Revenue is usually required to be filed with the Clerk indicating that all inheritance taxes have been paid or that no inheritance taxes are due. If certain statutory requirements are met, the Personal Representative of the estate, pursuant to T.C.A. 67-8-409(g), may file an Inheritance Tax Affidavit with the Clerk's Office in lieu of obtaining a Release from the Tennessee Department of Revenue.

Pursuant to T.C.A. 71-5-116(c)(2), before any estate may be closed, the personal representative must file with the Clerk a Release from the TennCare Bureau evidencing payment of all medical assistance benefits, premiums, or other such costs due from the estate under law, unless waived by the bureau. Your attorney will assist in this filing.

The estate may be closed by filing either a detailed accounting before the Clerk or by filing statements in lieu of a detailed accounting with the Clerk. If all goes well with the administration and none of the beneficiaries are minors or incompetents, you may be able to use the statement in lieu method. If even one beneficiary does not agree to sign or if you anticipate any problems, it may be necessary to present a detailed accounting to the Clerk.

If all the competent adult beneficiaries are in agreement, the personal representative and distributees may respectively file two (2) separate statements regarding their rights and responsibilities and waive the requirement of the presentation of a Detailed Accounting before the Clerk. These two (2) separate statements work together in combination and consist of a Personal Representative Statement and a Distributee Statement. Along with the statements, an Order to Close without Detailed Accounting is required. You cannot use this method if even one heir refuses to sign a statement and you cannot use this method if any residual beneficiary is a minor or an incompetent person.

If it becomes necessary to close the estate with a Detailed Final Accounting, there are many legal issues which should be considered before proceeding with this method and your attorney must be involved every step of the way.

The Court will not sign an Order closing the estate so long as there are unpaid court costs in the case.

IV. Other Issues

There are various other issues related to an estate administration which are too numerous to be detailed in this guide. There is much information and many issues, both legal and non-legal, which are not addressed here. Consult your attorney for specific legal advice.