

Procedural Information Only Estate Matters

This procedural information packet is provided to assist you with procedural filing requirements for the Clerk's Office. The information provided pertains to matters affecting this office only so you must consult with your attorney to discuss the full statutory procedures you must perform as the Court-appointed Personal Representative. This guide should not be used for administering an estate in another county as their probate procedures may be different than those practiced in this Court.

The Clerk's Office is prohibited from discussing legal issues; therefore, call your attorney with any legal questions- rather than the Clerk's Office.

Since this information packet only contains general procedural requirements for the Clerk's Office, you should always keep your attorney informed of situations which may arise during your tenure as Personal Representative.

Letters

Letters will be issued to the Personal Representative after the appointment hearing. These Letters are the instruments which evidence the Personal Representative's authority to handle the affairs of the decedent's estate.

If the decedent died with a Will, our office will issue Letters Testamentary.

If the decedent died without a Will, our office will issue Letters of Administration.

Until such time as Letters are issued, you have no authority to handle any of the decedent's affairs. However, there are important things you can do at the beginning of this process:

- Begin identifying assets which are solely in the name of the deceased or those assets you cannot access with a certified copy of the Death Certificate. These are the assets that will eventually become the "probate" assets. If the total value of these assets is \$25,000 or less, you may consider filing a Small Estate Affidavit.
- Determine if the decedent was fifty-five (55) years of age or older and was receiving TennCare benefits while confined to a nursing facility- which may further complicate the process of selling any real property. You will want to seek the advice of an attorney in this situation.

Personal Representative Appointment

After the proper pleadings are filed with the Clerk's Office and all interested parties have been notified, a hearing will be conducted by the Court to formally

appoint you as the Personal Representative for the estate and allow you to open the estate.

Personal Representative Oath

Once the hearing is concluded, you **must** appear in the Clerk's Office and sign your Personal Representative Oath stating that you will properly perform your duties as Personal Representative to the best of your ability.

Letters

Once you have been formally appointed as Personal Representative, signed the Oath and posted a Surety Bond (if required), the Clerk's Office will issue you either Letters Testamentary or Letters of Administration.

Bond and Fees

You and your attorney must execute a Cost Bond in order to obtain Letters during administration of the estate. Initial filing fees must be paid at the time of filing. Any accrued Court costs are expected to be paid annually- if the estate remains open after one (1) year- and at the time the estate is closed. If you will be publishing a notice for creditors, please bring a separate check which will be made payable directly to the newspaper/publication.

If the Court has ordered a Surety Bond, you should sign the Corporate Surety Bond form (also known as the Bond Book) when you come to the Clerk's Office and you must make arrangements to secure the Bond. Securing a Bond typically involves a check of your past credit history. If you have any concerns about the Bond, discuss those with your attorney.

Duties and Filings Once Estate is Opened

Once the estate is opened, you will be charged and responsible for performing certain duties. There are several filings that you will be required to file with the Probate Clerk's Office within a certain timeframe.

Timeframes for Filing

- Affidavit of Notice to Heirs- within 60 days from appointment
- TennCare Affidavit- within 60 days from appointment

Timeframes for Filing When Ordered by the Court

- Inventory- within 60 days from appointment
- Interim Accounting- within 30 days after the 15 month date of your appointment

- Annual Accounting- within 30 days after the 12 month date of filing your Interim Accounting
- Annual Status Report- within 15 months from Appointment and thereafter, 12 months after filing the previous Annual Status Report. (Annual Status Reports are still required if Accountings are waived.)

Bank Accounts

You may need to establish an estate bank account(s) with a financial institution which will require you to apply for an Estate Taxpayer Identification Number (EIN). This application can be obtained from the Internal Revenue Service's website at IRS.gov. You may also be required to file Annual Accountings with the Court (discussed in more detail below) so be sure and inform the banking institution that detailed financial statements must be available to you, either online or by mail.

Affidavit of Notice to Heirs

Pursuant to T.C.A. § 30-2-301 (b), you must execute and file with the Clerk's Office an Affidavit of Notice to Heirs within sixty (60) days of your appointment. Be sure to include on the Affidavit form the names of all beneficiaries under the Will, or the heirs-at-law, even if additional pages are required.

TennCare Affidavit

Pursuant to T.C.A. § 30-2-301 (b)(5), you must provide notice by Affidavit to the Clerk that the Bureau of TennCare has been notified of the decedent's death. In this Court, you must file with the Court Clerk's Office a Release and/or Receipt from TennCare evidencing that no monies were owed by the Estate to TennCare or that a claim has been paid or settled or adjudicated before the Court will sign an order closing the estate.

Inventory with Certificate of Service

Unless specifically waived by Will or unless all the residuary distributees/legatees agree to waive the filing of the Inventory by written statement to the Court, you must file an Inventory of the estate's assets within 60 days of your appointment as Personal Representative, pursuant to T.C.A. § 30-2-301 (a). The Inventory must be timely filed with the Probate Clerk's Office and a copy must be mailed to all interested parties of the decedent's estate with a Certificate of Service. If the Inventory is not timely filed, the law requires the Clerk to issue you a Notice of Delinquency in filing the Inventory and thereafter, you may be summoned to Court to answer why the required Inventory has not been filed.

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 will also be required to determine estate tax liability. Consult your attorney for information regarding the Inventory.

Notice to Creditors

The Clerk's Office will mail you and your attorney a copy of the Notice to Creditors within four (4) weeks of your appointment. Pursuant to T.C.A. § 30-2-306(d), a copy of the Notice must be mailed or delivered to all known (actual) creditors who are reasonably ascertainable in order to avoid any legal issues that might otherwise develop.

Inheritance Tax Return

In this Court, your attorney or accountant is required to file an Inheritance Tax Return with the Tennessee Department of Revenue on behalf of the estate. Pursuant to T.C.A. § 67-8-420(a), you are required to file a copy of the Tax Receipt or Certificate with the Clerk indicating that all inheritance taxes have been paid or that no inheritance taxes are due. The "Short Form" Inheritance Tax Return (INH-302) is available on the State of Tennessee's website at TN.gov. The mailing address for filing the Return can be found at the top of the form and the Receipt will be returned to you by mail. The Clerk's Office is not authorized to answer any questions relating to these forms.

Accountings

If the estate remains open over fifteen (15) months, unless specifically waived by Court Order, an Interim Accounting and thereafter Annual Accountings shall be due during your tenure as Personal Representative. There are several forms and documents which must be filed for the Interim and Annual Accountings. It is important that you are aware we are not allowed to accept incomplete Accountings.

Interim Accounting

Your first accounting (Interim Accounting) must be filed with the Clerk within thirty (30) days after the fifteen (15) month date of your appointment by the Court.

Annual Accounting

Your Annual Accounting must be filed with the Clerk within thirty (30) days after the twelve (12) month date of your Interim Accounting.

Estate Status Reports

An Estate Status Report must be filed annually with the Clerk's Office until such time as the estate is closed. This Report is never waived and is due whenever

an Accounting becomes due for filing- even if Annual Accountings may be waived. Please note that if an Accounting is due to be filed with the Clerk's Office, the mere filing of a Status Report is not sufficient to eliminate the Accounting requirement; therefore, all Accounting documentation and the Status Report will be due.

If the Court has waived the requirement for filing Accountings by Court Order, you will be required to file an Annual Status Report within thirty (30) days after the twelve (12) month date of filing your previous Annual Status Report.

Closing the Estate

There are two (2) methods to choose from in closing out an estate in Rutherford County Probate Court. The estate may be closed by filing either a Detailed Final Accounting before the Clerk or by filing Statements in Lieu of a Detailed Final Accounting.

Statements in Lieu of vs. Detailed Final Accounting

If the administration of the estate is properly administered and none of the beneficiaries are minors or incompetents, all portions of the estate have been distributed, and ALL beneficiaries acknowledge that the estate has been properly distributed to them, then you may use the "Statement in Lieu" method. However, if even one residual beneficiary does not agree to sign a Statement or you anticipate any problems, it will be necessary to file a "Detailed Final Accounting" with the Clerk. These two (2) separate Statements work together in combination and consist of a Personal Representative Statement and a Distributee Statement. An Order to Close Without Detailed Accounting is also required. Please remember- you cannot use this method if even one (1) heir or beneficiary refuses to sign a Statement or if any residual beneficiary is a minor or incompetent person.

NOTE: If any distributee of the estate is a Trust, you should contact your attorney before filing a Statement in Lieu of Detailed Accounting to be signed by a Trustee as there are possible future legal implications to be discussed.

Detailed Final Settlement

The Personal Representative must mail and file the document Notice of Date to Submit Final Accounting to all the interested parties within five (5) days of presenting the Accounting in the Clerk's Office. On the date and time certain that the Personal Representative provided in the Notice of Date to Submit Final Accounting, the Personal Representative will present a Final Settlement to the Clerk which must include the following:

- Detailed Final Accounting Cover Sheet which must be sworn to and include: Beginning Balance brought forward from the last accounting period; Total Receipts of funds/assets during the accounting period; Total Disbursements/expenditures during the accounting period; and Ending Balance
- Detailed Accounting Register(s)
- Financial Statements
- Copy of Notice of Date to Submit Final Accounting
- Certificate of Service
- Corporate Surety Statement (if Bond has not been waived) stating that Bond is still in effect.
- TennCare Release- Pursuant to T.C.A. § 71-5-116(c)(2), the Personal Representative must submit a release from the TennCare Bureau evidencing payment of all medical assistance benefits, premiums, or other such costs due from the state under law with respect to a decedent who was fifty-five (55) years of age or older at the time of death, unless waived by the Bureau. The estate cannot be closed until this TennCare Release is submitted and filed with the other closing documents.
- Tennessee Department of Revenue Release
- Release(s) of all Claims and payment of all Court costs.

INCOMPLETE ACCOUNTINGS WILL NOT BE ACCEPTED.

This is, basically, an Annual Accounting which details the final or proposed estate disbursements. If you have previously filed an Annual Accounting(s), the Final Settlement will begin with that ending balance and include any and all transactions incurred during this specific accounting period, as well as detail and/or propose final disbursements to the beneficiaries.

Any residuary beneficiaries in agreement with the Final Accounting may sign a Receipt and Waiver of Appearance thereby waiving their personal appearance at the Final Settlement. Otherwise, a Notice of Date to Submit Final Accounting must be sent by certified mail to all interested parties.

A minimum of thirty (30) days is required for review of the Detailed Final Accounting once presented to the Clerk. This statutory exception period may be extended by the Court for sufficient cause. Please do not contact the Clerk's Office immediately upon the expiration of thirty (30) day period as Accountings are reviewed in order received and some delays may be experienced. Our Court does not require the filing of additional pleadings for approval of an Accounting- it will either be approved upon review or set for hearing due to various deficiencies.

Reminders Regarding Your Personal Representative Duties

These basic reminders cover the general concept of your duties as Personal Representative. Any questions you may have about this information should be directed to your attorney and not the Clerk's Office.

- Keep in mind that you will ultimately account to the Court for your actions as Personal Representative.
- Never co-mingle your funds with the funds of the estate. Always keep receipts and make notes on the Accounting Register regarding any transactions that may not be easily recognized by the Court- such as checks payable to individuals for services performed on behalf of the estate. Never use a cashier's check to conduct estate business.
- If you are using an online banking printout as your Accounting Register, it must include transaction dates, check numbers, payees, transaction amounts, and the nature of each transaction. If your online banking system does not allow you to "memo" the nature of the transaction and it is not something easily recognized by the Court, you must "handwrite" it on the Register.
- Simply copying online bank statements will not serve as a replacement for your Accounting Register. However, most online banking services include various software formats that allow you to convert the online statement to an Accounting Register for printing. Be sure to check and see if this option is available through your bank. Some banks will also waive any extra fees for providing the original statements if they are aware it's for the purpose of filing an Accounting with the Court.
- List all checks numerically in the Accounting Register, including any voided, missing or omitted check- as missing and omitted checks will cause an Accounting to be disallowed.
- It usually takes thirty (30) to sixty (60) days for Accountings to be reviewed and approved for recording. However, an Accounting may be set for a review hearing if it contains certain deficiencies.
- The Clerk's Office does not have the authority or ability to extend the time for filing an Inventory, Accounting or Annual Status Report. If an extension is necessary, your attorney must file a Motion with the Court requesting such an extension.

Other Items of Interest

As to Forms: We do not include any forms with this procedural information packet since there are several methods you may choose from in administering and closing out the estate.

As to Claims: The Clerk will mail you and your attorney copies of any Claims filed against the estate. You should then consult with your attorney as to how you wish to proceed regarding the Claim as there are many legal issues to

consider. When closing the estate, you must verify that all Claims have been paid, released, settled or adjudicated. A cancelled check for verification that a Claim has been paid can only be used if it is payable and endorsed for the exact amount of the Claim- and the original cancelled check must be provided to the Clerk. Otherwise, it will be necessary for you to contact the Claimant and request a Release of the Claim. If a Claim was settled or adjudicated, an Order must be entered regarding such Claim.

As to Specific Bequests: 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 then file the receipt with the Clerk as a Specific Bequest Receipt. Cancelled checks as verification that a specific bequest has been paid and received are allowable only when the Clerk can verify the endorsement. Please try to obtain a Specific Bequest Receipt from the recipient. Never make any distributions- cash or otherwise- to minors or incompetent persons.

As to Court Costs: Accrued Court costs should be paid annually if the estate remains open longer than one (1) year. Court costs related to the Notice of Publication to Creditors, any Notices and/or Citations issued, and the issuance of any additional Letters will be added to your account. Court costs are subject to change without notice and are determined by statute- not by the Clerk. Court costs may continue to accrue at any time while the estate remains open and the full amount is expected to be paid when the estate is closed.

As to Statutory and Court-Ordered Deadlines: It is very important that you realize this office is charged and authorized by the Court to continually monitor its cases. Your failure to timely perform certain statutory duties may result in Notices and/or Citations to Appear being mailed or served on you and will result in additional cost and fees. The Court may also issue an Order for Show Cause requiring you to appear and explain your failure to perform certain duties. Your failure to properly account for the assets placed in your charge could 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 actions may also be assessed against you.

As to Other Issues: There are many issues related to your duties as Personal Representative and to the administration of an estate which cannot be fully detailed in this Procedural Guide. Even though the information we have provided in this guide may appear to be quite substantial, there are numerous other issues- both legal and non-legal- which are not discussed here.

As to Other Duties: Remember that all documents filed with our office should be photocopied and mailed or delivered to all interested parties of the estate, including creditors. All correspondence with our office should be written and must include the estate name. You are required to notify this office of any and all address changes. Our contact information is as follows:

**Probate Court Clerk
319 North Maple Street
Murfreesboro, TN 37130
(615) 898-7798**

*This packet is used by the Honorable Toby Gilley, Probate Judge, Rutherford County, Tennessee whereby his office modeled this packet after the guidelines used in the Probate Court for Davidson County, Tennessee.