



YOUR DUTIES AS PERSONAL REPRESENTATIVE

Guidelines for Executors and Administrators

by Layne T. Rushforth

REMINDER: *A personal representative is a “fiduciary”, which refers to someone who is acting in a position of trust for the benefit of others. As a fiduciary, a personal representative is held to a high standard of integrity, ethics, and accountability. This memo was prepared to give an overview of a personal representative’s duties and responsibilities and to help a personal representative avoid the civil and criminal liability that can result from failure to comply with applicable state and federal laws. READ IT CAREFULLY! If you are ever uncertain as to what you may or may not do or what you should or should not do, consult with your probate attorney.*

1. **INTRODUCTION.** This memo outlines the duties of an executor or administrator of a decedent's estate, and gives a simplified overview of the estate administration process. This is specifically for someone who has been officially appointed by the probate court to administer a decedent's probate estate¹ as an executor or administrator. In this memo, “you” refers to the court-appointed executor or administrator, and “we” refers to the law firm of The Rushforth Firm, a Nevada Professional Corporation. If you ever have a question about this memo or about what you should and should not do, please call us at (702) 255-4552.

1.1 **Title.** Nevada law uses the term “personal representative” to refer to the person appointed by the court to administer the estate and to distribute the estate pursuant to the terms of the Will or pursuant to the terms of the intestate succession laws. The term “personal representative” replaces references to:

- (a) “Executor” (one who is nominated under a Will);
- (b) “Administrator” (one who is named to administer an estate where there is no Will); and
- (c) “Administrator with the will annexed” (who is appointed as administrator when the decedent left a Will but either did not name an executor in the Will or the named executor fails or ceases to serve.²)

1.2 **Persons Serving Jointly.** Two or more persons may be appointed to act as co-personal representatives (i.e., co-executors or co-administrators). Unless the decedent’s will specifically provides otherwise, when more than one personal representative is serving, action is taken either by majority vote or with court approval. For the purposes of this memo, the singular term “personal representative” is used to refer to all executors or administrators appointed by the court.

¹The “probate estate” consists of all assets belonging to the decedent which do not pass to other persons or entities by operation of law (such as assets held in joint tenancy or in a living trust) or by operation of contract (such as life insurance).

²The female forms, “executrix” and “administratrix”, are sometimes used in court documents, but I hope that no one is offended if we do not use them in this memo.



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- 1.3 **Official Appointment; Issuance of “Letters”**. A personal representative has no authority until officially appointed by the probate court. Even if you are named as executor in the decedent's Will, you have only been nominated; your official appointment comes only by court order. When you are authorized to act as executor or administrator, you will be given “Letters Testamentary” (for an executor) or “Letters of Administration” (for an administrator), and “Letters of Administration with the Will Annexed” (for an administrator with the will annexed). Keep in mind that many actions taken by a personal representative require specific court authorization even after the personal representative has been officially appointed by the probate court.
- 1.4 **Estate Administration**. Generally, your task, as personal representative, is to:
- (a) Collect all assets³ belonging to the decedent;
 - (b) Manage and invest assets;
 - (c) Pay taxes, debts and other expenses; and
 - (d) Distribute the remaining estate to the devisees or heirs⁴.
- 1.5 **Powers**. As personal representative you have very few general powers. Most actions must be authorized by the probate court. You cannot assume that you can take action without court approval because the Will says so. Even if you have the power to take certain actions, getting prior court authorization may be advisable if the action will cause controversy among the heirs or Will beneficiaries.
- (a) After your official appointment, you may, without further court authority:
 - (1) Collect the decedent's personal property and place them in your possession⁵;
 - (2) Collect the decedent's cash and cash accounts and place them in one or more federally-insured accounts in your name as executor or administrator for the estate;
 - (3) Keep real estate in good “tenantable” repair, and rent out the property for periods of less than one year.

³In legal terminology, the words “property” and “assets” are used interchangeably. Real property outside of Nevada is not subject to the jurisdiction of the Nevada courts, and local legal counsel should be retained where such real property is located.

⁴Nevada law defines “devisees” to refer to beneficiaries under the decedent's Will whether they receive real and/or personal property. “Heirs” are those entitled to a decedent's assets to the extent not distributed under the terms of a valid Will under the state's intestate succession statutes [NRS Chapter 134].

⁵See section 3 of this memo.



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- (4) Collect interest, dividends, rents, and other income due the decedent, to be deposited in federally-insured accounts belonging to the estate in your name as executor or administrator.
- (b) **Unless previously authorized by the probate court, you should NEVER:**
- (1) Do anything in the estate's behalf before "Letters" are issued by the probate court;
 - (2) Carry on the decedent's business or perform the decedent's contracts;
 - (3) Make any contracts or agreements binding on the estate;
 - (4) Sell, lease, abandon, or give away estate assets⁶;
 - (5) Borrow money; sign a promissory note, mortgage, trust deed, or other lien document affecting estate property.
 - (6) Distribute estate property to a beneficiary;
 - (7) Act without the consent of any co-executor or co-administrator (or a majority of such, if there are more than two);
 - (8) Pay any debt or claim against the estate⁷; or
 - (9) Sign a release or otherwise compromise any debts or claims against the estate;
- (c) **Under Nevada law, you can NEVER:**
- (1) Deposit estate funds into a personal account;
 - (2) Place estate assets into a personal safe deposit box;
 - (3) Co-mingle the assets of the estate with those of any person;
 - (4) Take title to assets in your own name without reflecting your capacity as an executor or administrator;
 - (5) Distribute assets to a beneficiary without prior court approval.

⁶See subsection 3.5 regarding court approval for sales.

⁷Funeral costs and the expenses of the decedent's last illness can be paid without prior court authorization IF there are clearly enough funds to meet all of the estate's obligations, the creditors' claim period has expired, and the claimant has filed a verified claim with the probate court.



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- 1.6 **Court Hearings.** Anytime we submit a petition to the court, the court will assign a hearing date. Routine matters are set for Fridays at 9:30 a.m., and a notice must be sent at least 10 days before the hearing by mail to the heirs and/or Will beneficiaries and any interested persons (such as creditors) who have requested notice. *Unless a petition or motion is contested, you will not usually need to attend the court hearings.* If you want to attend, be sure to let us know in advance so that we can accompany you to the courthouse.
2. **PROBATE OVERVIEW.** The probate process can be summarized as follows (with an asterisk “*” indicating steps that may not be required for all estates):
- 2.1 ***Open Safe Deposit Box.** Any interested person may file a petition for authorization to open a safe deposit box and remove the decedent's Will, if any.
- 2.2 ***Special Administration.** If there will be a delay in getting a regular executor or administrator appointed or if there is a special urgency, a qualified person files a petition for appointment of a special administrator.
- 2.3 **Petition for Appointment of Personal Representative.** The person or persons entitled by law or under the will to be appointed administrator or executor file a petition to be appointed. If there is a will (or a will and codicils), the same petition asks the court to admit the will (and any codicils to probate). A “Notice of Hearing” with respect to this petition is mailed to all heirs and Will beneficiaries. The notice can also be given by publication if a person's address is unknown.
- 2.4 ***Contest.** Heirs and Will beneficiaries may file a “contest” opposing the probate of the Will and/or the appointment of the petitioner as administrator or executor.
- 2.5 **Court Hearing on Petition for Appointment.** There is a court hearing on the petition for appointment of the personal representative. Unless there is a contest, it is routine for the personal representative to be appointed at that hearing.
- 2.6 **Estate Administration.** The estate-administration period begins when the court grants the order formally appointing the personal representative and ends when the court issues an order formally discharging the personal representative. During the estate-administration period:
- (a) A notice to creditors is published. It is also mailed to known creditors except to creditors whose claims are undisputed. The creditors' claim period is 90 days unless summary administration is allowed, in which case there is a 60-day creditors' claim period.
- (b) The personal representative obtains appraisals, gathers assets, and prepares an inventory of the estate. The inventory contains a list of all assets and their respective values (as of the decedent's date of death).



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- (c) The personal representative pays federal taxes⁸ and other priority claims and reviews other claims.
- (d) The personal representative makes sure that all estate property is properly protected and prudently invested⁹. As needed, the personal representative petitions for instructions, for confirmation of the sale of assets, for authorization to continue or conduct businesses, and for permission to make specific investments.¹⁰
- 2.7 **First Accounting.** Upon conclusion of the creditors' claim period, administrator or executor files an accounting¹¹ and, in conjunction therewith, approves nonpriority claims and petitions for authority to pay the claims. If the estate is ready for final distribution, the first accounting can also be the final accounting. If the estate is not ready for final distribution, the petition can include a petition for a partial distribution. If distributions are approved, the personal representative makes the approved distributions and obtains receipts from the distributees.
- 2.8 **Explaining Why An Estate Is Not Closed.** After six months (or 15 months, if an estate tax return is required), the administrator or executor files an explanation why the estate is not closed.¹²
- 2.9 **Annual Accountings.** An accounting¹³ is required annually until the court orders the final distribution.
- 2.10 **Final Accounting; Decree of Final Distribution; Final Discharge.** When a final accounting has been filed, a petition is filed requesting approval of the final accounting and a decree of final distribution. After the court orders a final distribution:
- (a) The personal representative makes the approved distribution of the estate's assets and obtains receipts.
- (b) Upon the filing of all distributees' receipts, the court issues an order of final

⁸Federal taxes are discussed in section 4 of this memo.

⁹The standard for making investments is discussed in subsection 3.4 of this memo.

¹⁰Asset management and other aspects of estate administration are discussed more completely in section 3 of this memo.

¹¹Accountings are discussed further in section 5 of this memo.

¹²The Nevada legislature has indicated a desire to have all probate cases closed within six months. Unfortunately, if federal estate taxes are involved, the IRS has at least 18 months from the date of the decedent's death or nine months from the filing of the federal estate tax return (IRS form 709) to evaluate the estate tax return. For that reason, where an estate tax return is required, it is common for the estate to be open for at least 18 months or even longer.

¹³Accountings are discussed further in section 5 of this memo.



discharge.

3. **COLLECTION AND MANAGEMENT OF ASSETS.** After you are a court-appointed personal representative, you must take possession of the decedent's assets.

3.1 **Protecting Assets; Limiting Liability.**

- (a) Securities (especially bearer bonds), jewelry, and other items of substantial value should be kept in a safe deposit box. Please let us know if there are any items you think should remain, or be placed, in the possession of another person.
- (b) Accounts at financial institutions¹⁴ in which the decedent had an interest should be given early attention. The balance of each account should be transferred into a federally-insured estate account, registered something like this: "*JAMES DOE, Executor of the Estate of JOHN DOE*". The estate should have its own tax identification number, which we can help you apply for at your request. Outstanding checks made by the decedent should be itemized and, in most situations, honored. Accounts owned by the decedent as a joint tenant with another named person do not belong to the estate; and the surviving joint tenant has the legal right to collect the account. Accounts for which a beneficiary was designated are payable to the beneficiary unless the Will revokes the beneficiary designation.
- (c) The proceeds from life insurance and other death benefits are payable to the designated beneficiary or beneficiaries. Unless the estate is the beneficiary or designated beneficiaries are all deceased, such benefits are not assets of the probate estate. If the estate is the appropriate recipient, the appropriate benefit claim form should be obtained, completed, and submitted as soon as reasonably possible.
- (d) All credit cards issued solely in the decedent's name should be cut, and the pieces should be returned to the issuer promptly with a request to cancel the account. If there is a joint account holder, advise each credit card company of the date of the decedent's death and let it know that the surviving account holder will be solely responsible for any charges made thereafter. Please advise us of any action you take.
- (e) Estate assets should be adequately insured against damage, theft, loss, and personal injury claims. Make sure existing policies continue in force after the decedent's death. You may need to replace existing policies, or the estate -- or you as personal representative -- may need to be added as an insured on a rider to existing policies.

¹⁴Such as national and state banks, federal savings banks (savings and loan associations), credit unions, thrift companies, etc.



- 3.2 **Inventory.** One of your first responsibilities as personal representative is to ascertain the decedent's assets and make an inventory of them. The inventory must be filed with the court, and must include a value for each item (valued as of the decedent's date of death). Bank accounts, publicly-traded securities, and vehicles listed in the "blue book" can be listed without a formal appraisal, but we will have to explain to the court how you arrived at the value. Real estate, valuable jewelry, and other special collections should be appraised by an independent appraiser, whom you may select. We can help you select appraisers if you do not know any who are qualified and whose fees are reasonable. There are circumstances in which a formal appraisal is not required, and we can discuss whether or not those exceptions apply to your situation. The value shown on the inventory should show encumbrances and should reflect the net value of each asset¹⁵ using date-of-death values. If a federal estate tax return (IRS Form 706) is required, the values on the probate inventory and the values on the estate tax return should be identical unless the inconsistency is explained.
- 3.3 **Record Keeping.** You *must* keep an exact record of all receipts and disbursements. Your records should reflect the source of each receipt, and should indicate whether it represents principal or income¹⁶. Court accountings and distributions are discussed in section 5, below.
- 3.4 **Withdrawals; Investments.** Without first consulting us, you should not make any checks or other withdrawals. The personal representative makes sure that all estate property is properly protected and prudently invested.
- (a) Nevada law prohibits fiduciaries from making speculative investments. NRS 164.050 states, in part, "In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their money, considering the probable income as well as the probable safety of their capital."
- (b) You may transfer cash into any federally-insured account or into direct obligations of the United States which mature in one year or less; other investments can be made only with prior court approval.
- 3.5 **Selling Estate Assets.** It may be necessary to sell estate assets to avoid depreciation loss, to raise cash needed for expenses, or to comply with the terms of the Will. Probate sales

¹⁵The "net value" is the gross value of the asset less the value of any known liens or encumbrances, including mortgages and other liabilities. The inventory should reflect the net value and how it was calculated.

¹⁶"Principal" refers to all assets, such as a bank account, stock, car, home, and the like. "Income" refers to revenues generated from the principal, including interest, dividends, rent, royalties, and the like. Income also includes compensation for the decedent's personal services, such as salary and bonuses. Some payments may include income and principal, such as a mortgage payment which represents both interest and principal.



are subject to many technical rules, and you should NOT make any arrangements for the sale of assets without first consulting us. If you sell an asset at an unreasonably low price, you will be personally liable for the difference between what you should have sold the asset for and the price the estate actually received.

- (a) Generally, some types of assets should not be put up for sale without prior court authority. This would include property that is specifically gifted to someone under the terms of the decedent's will and marketable securities.
- (b) Other assets, such as real property, can be put up for sale and the terms of the sale negotiated, but title should not be transferred until the court confirms the sale.
 - (1) If court confirmation is required, any agreement to sell the property should contain a provision that reads something like this:

"Notwithstanding anything herein to the contrary, this property is being sold from the estate of a decedent and is subject to the requirements of Chapter 148 of the Nevada Revised Statutes with respect to the sale of [real or personal] property, including the requirement that the sale be confirmed by the probate court (the Eighth Judicial District Court in Clark County, Nevada, Case No. P 12345)."
 - (2) Once the terms of the sale have been agreed upon, the agreement must be submitted to the court for confirmation.
- (c) Depreciating assets, perishable items, and assets that will incur a loss or expense if not sold promptly can be sold without prior court authorization. Even so, you are responsible for the true value of the assets, regardless of the sale price. If there is a potential for a dispute, you may ask the court to approve the sale retroactively.
- (d) Sales of marketable securities can be sold for the market price if prior court authorization is obtained. A confirmation of the sale is not required.
- (e) Selling real property requires several steps. Expecting a quick sale of real property from an estate is unrealistic.
 - (1) Notice of the sale must be published in a newspaper for three consecutive weeks unless the will specifically authorizes or directs the sale of the property. The notice of sale will specify a sale date, or rather a date by which should be submitted. You should not sign any agreement to sell the property until after the date specified for the sale has passed.
 - (2) After the notice period has expired an agreement can be made "subject to confirmation by the probate court". Although it is not required, it is



also wise to avoid fixing a specific date for the closing of escrow. In addition to the language mentioned in subparagraph 3.5(b)(1), real estate “offer and acceptance” forms should contain something like this: “*Escrow shall close within seven days after confirmation by the probate court.*” If the purchaser asks for it, a provision might be included that requires you to use “*reasonable efforts to obtain that confirmation within a reasonable time.*”

- (3) A petition for confirmation of the agreed upon sale must be filed, notice given to the heirs or will beneficiaries, and a hearing set at least ten days after the notice is given. As of the date of this memo, probate hearings for this type of petition are always scheduled for Fridays at 9:30 a.m. unless Friday is a court holiday.
- (4) An appraisal made within one year is normally required by law, but there are some exceptions.
- (5) At the hearing, the court will ask for additional bids on the property. Another bidder must increase the bid by the lesser of \$5,000 or 5 % (whichever is less) in order to prevail. Even if there are no higher bids, the judge has the discretion to refuse to confirm the sale if he or she determines that the sale is not in the estate's best interests.
- (6) Escrow on the sale can close any time after the court has confirmed the sale, but a certified copy of the court's order must be recorded prior to or as a part of the closing of escrow.
- (7) The deed you sign should be an “Executor's Deed” or an “Administrator's Deed”, but it should not contain any special warranties of title. It should only purport to convey the decedent's interest in the property. We recommend that you obtain title insurance for the buyer.

3.6 Borrowing Money; Mortgaging Property; Leases; Contracts. Court approval is required before you enter into any agreement that binds the estate, such as loans, mortgages, or leases (except for leases of one year or less). You must also petition the court for authority to carry out a contract made by the decedent or to compromise any claim of or against the decedent or the decedent's estate.

3.7 Disposing of “Junk”. You can dispose of items that are truly worthless, but the safest approach is to get prior court approval before disposing of anything. If you dispose of some old magazines, for example, and it turns out that a valuable comic book collection was included, you may be held liable to the estate for the value of the collection. Even with respect to worn out clothing and useless personal effects, you should at least confer with the heirs or beneficiaries to see if some of the items have sentimental value. In short, be sure to confer with us before disposing of anything but true trash.



3.8 **Debts, Claims, Expenses.** After your appointment, you will sign and we will have published a “Notice to Creditors” which puts creditors and claimants on notice that they have 90 days¹⁷ in which to file a claim. Known creditors should also be mailed a copy of the notice, so you must provided us with a list of known creditors at your earliest convenience. After the creditors' claim period expires, you will either approve or reject the claims. Approved claims are forwarded to the judge for authority to pay. If assets are insufficient to pay everyone, payments from the estate are made in the following order of priority:

- (a) Expenses of administration, including court costs, your fee¹⁸, attorneys' fees¹⁹, and other costs associated with administering the estate.
- (b) Priority claims, including funeral costs, expenses of the decedent's last illness, certain wage claims, and taxes, including federal income, gift, and estate taxes.
- (c) General creditors²⁰.

3.9 **Advisors.** You may retain accountants and other advisors to help you make wise tax-planning and investment decisions. If extraordinary fees are anticipated, be sure to let us know so that we can obtain the proper authorization from the probate court. You are ultimately responsible for the entire estate, and you cannot delegate away that responsibility by hiring others to do your job. Also, if you hire someone to do the work of an administrator or executor, your compensation may be reduced by the fees you pay to have the work done.

4. **FEDERAL TAXES.** You will be required to pay the decedent's federal taxes, including income, gift, estate taxes, and generation-skipping transfer taxes and to file the related tax returns. If the decedent was a nonresident of Nevada, or if the decedent had income from outside Nevada, or if you are a not a Nevada resident, you may also have to pay taxes imposed by another state or municipality.

4.1 **Income Taxes.** You will have to file the decedent's final income tax return (IRS Form 1040) and pay the taxes for the year of the decedent's death. If the decedent dies before filing the income tax return for the prior year, you may have to file it and pay the

¹⁷If the estate is valued at less than \$200,000 AND the court allows Summary Administration, the creditors' claim period is 60 days.

¹⁸The compensation of an executor or administrator is set by law at 4% of the first \$15,000, 3% of the next \$85,000, and 2% of the balance. It is called a “commission” in the statute. If you have rendered extraordinary services to the estate, you may be entitled to receive additional compensation.

¹⁹Attorneys' fees are set by agreement between the personal representative (you) and the attorneys (us). After a fee arrangement is agreed upon, you are entitled to a written fee disclosure statement. Nevada law does not set a percentage fee for attorneys, and it is usually less expensive if you hire an attorney or firm that bills by the hour rather than charging a percentage fee.

²⁰Since the estate's assets are valued at their net value, a secured creditor's interest is not generally affected by estate administration.



applicable taxes, also. Income paid after the decedent's death belongs to the decedent's estate, and you will have to file a fiduciary income tax return (IRS Form 1041) for the estate and pay the income taxes, except with respect to income distributed to beneficiaries. You should make arrangements with a certified public accountant or other qualified tax return preparer to have the necessary returns prepared.

4.2 Federal Transfer Taxes. Any person who makes lifetime gifts or death-time transfers having a cumulative value equal to or less than the “applicable exclusion” for the federal gift and estate taxes does not incur a federal gift or estate tax. The applicable exclusion is \$2,000,000 for decedent’s dying in 2007 or 2008. It is also scheduled to increase unless, of course, Congress changes the law before the changes come into effect.²¹ The tax is 45% until 2010.²² A federal estate tax return is due if the gross value of the decedent's estate²³ plus the net value of lifetime gifts (other than annual gifts of less than \$12,000 per recipient per year) exceeds the applicable exclusion. A generation-skipping transfer tax may also be due if transfers to grandchildren and other lower generations exceed the GST exemption.²⁴ If such a return is required, we would be happy to prepare it at your request or arrange for an accountant to do so.

4.3 Tax Forms and Publications. IRS Publication 559 is available from the IRS outlining a fiduciary's responsibility with regard to federal taxes, which is updated annually. You or your accountant can order Publication 559 and other needed tax forms and publications from the IRS by calling 1-800-TAX-FORM (1-800-829-3676). Most tax forms and publications are free. You can obtain many forms from the IRS’ web site on the Internet.²⁵ We strongly recommend that you have tax returns prepared by a Certified Public Accountant.

5. ACCOUNTINGS AND DISTRIBUTIONS. You are required to account to the probate court for everything you receive and everything you disburse.

²¹Internal Revenue Code § 2010(c) provides for an “applicable exclusion”, which is the cumulative amount that can pass free of gift and/or estate tax. This is sometimes called “the exemption equivalent of the Unified Credit”. For ESTATE TAX purposes, the applicable exclusion has been, is, and will be: \$625,000 in 1998; \$650,000 in 1999; \$675,000 in 2000; \$1,000,000 in 2002 and 2003; \$1,500,000 in 2004 and 2005; \$2,000,000 in 2006, 2007, and 2008, \$3,500,000 in 2009; unlimited in 2010; and \$1,000,000 in 2011 and beyond. The applicable exclusion for GIFT TAX purposes is the same as that for estate tax purposes until 2004, when the applicable exclusion for GIFT TAX purposes remains frozen at \$1,000,000.

²²The maximum rate imposed for federal estate tax purposes was, is, and will be: 50% in 2002; 49% in 2003; 48% in 2004; 47% in 2005; 46% in 2006; 45% in 2007, 2008, and 2009; 0% in 2010; and 55% in 2011 and beyond.

²³The “estate” for federal estate tax purposes includes the probate estate, plus most assets passing from the decedent by operation of law or contract, such as joint tenancy assets and life insurance. We can help you determine what assets are to be considered and whether or not an estate tax return is required.

²⁴The GST tax is imposed at the highest rate imposed for federal estate tax purposes, which is shown in note 22. Starting in 2004, the GST exemption has been the same as the applicable exclusion for the estate tax, which is shown in note 21.

²⁵For IRS forms: <http://www.irs.gov/formspubs/index.html>. If you download the IRS forms in Adobe Acrobat format (.pdf files), the printed files will look just like the originals. The Adobe Acrobat reader program is required for this, but it is available free at <http://www.adobe.com/products/acrobat/readstep.html>.



- 5.1 **First Accounting; Claims.** After the creditors' claim period has expired, you need to submit your first accounting. You also need to submit any claims approved by you to the judge for authorization to pay, and, to simplify the procedure, we submit those claims as a part of the petition for approval of the first accounting.
- 5.2 **Annual Accountings; Final Accounting.** An annual accounting is required until the estate is closed, and the format is the same each year. Whenever the estate is ready to be closed, a final accounting is required.
- 5.3 **Content of Accounting.** You will have to provide an itemized record of all transactions. A formal accounting is filed with the court, which must contain a recapitulation that summarizes the accounting. The recapitulation shows all amounts for which you are responsible and then shows all amounts for which you can account. A recapitulation might look something like this:

- (a) “Charges”: The first part of a recapitulation is entitled “Charges”, which reflects the amounts that the personal representative is “charged” to manage and account for:

<i>CHARGES: AMOUNTS FOR WHICH THE PERSONAL REPRESENTATIVE IS RESPONSIBLE</i>	
<i>Description</i>	<i>Amount</i>
Inventory or Prior Accounting	\$345,632.00
Receipts	\$23,453.23
Gains on Sales	\$0.00
Other Charges	\$0.00
TOTAL CHARGES	369,085.23

- (b) “Credits”: The second part of a recapitulation shows the amounts that have been “credited” or accounted for:

<i>CREDITS: AMOUNTS FOR WHICH THE PERSONAL REPRESENTATIVE CAN ACCOUNT</i>	
<i>Description</i>	<i>Amount</i>
Disbursements	\$34,234.34
Losses on Sales	\$5,643.23
Other Credits	\$0.00
Assets on Hand	329,207.66
TOTAL CREDITS	369,085.23

- (c) Of course, the total amount for which you are responsible (“Total Charges”)



and the total amount accounted for (“Total Credits”) should be identical. Cancelled checks and receipts are not attached to the accounting, but they must be made available if requested by the probate court.

5.4 **Closing the Estate.** The estate is ready to be closed when the assets are ready for distribution and all creditors' claims have been paid, successfully challenged, or barred by law.

- (a) If a creditor's claim is rejected by formal notice from you, the creditor has 60 days to file a lawsuit. A creditor's claim is barred (a) if it is not filed within the creditors' claim period or (b) if it is rejected and the creditor fails to file a lawsuit within the 60-day period following formal rejection. The IRS is not subject to the state creditors' claim laws, and the IRS's claims must be satisfied in accordance with federal law.
- (b) If the estate is ready for final distribution to the heirs or Will beneficiaries, we can request it at the time of the first accounting; otherwise, we explain to the court why the estate is not yet ready to be closed. If assets need to be sold before distribution, or if creditors' claims remain unsettled, or if there is a dispute among beneficiaries regarding the accounting or distribution, the estate cannot be closed until those matters are resolved.

5.5 **Distributions.** The ultimate goal of the probate process is to get the estate's assets distributed to those entitled to it.

- (a) You **MUST** get prior permission from the probate court before making any distribution to an heir or Will beneficiary. Failure to do so can put you in contempt of court, and the judge has authority to remove you from office and to reduce your compensation, or both. If you make a distribution to which a beneficiary is not entitled (perhaps because creditors have a higher priority), you may be held personally liable to the estate for any improper distributions to the extent they are not returned by the beneficiary.²⁶
- (b) If the decedent's spouse or minor children have basic needs that are not otherwise provided for, a claim for a “family allowance” can be made. Let us know if this situation applies.
- (c) In the absence of special circumstances, the probate court will not approve a distribution to a beneficiary or heir until (a) an inventory has been filed, together with all required appraisals; (b) the creditors' claim period has expired and creditors have been paid or funds have been set aside therefor; and (c) the executor or administrator has filed an accounting showing the current status of

²⁶If you mispend estate funds, you are not only breaching your fiduciary duty and subjecting yourself to civil liability, you may also be committing a crime, such as “conversion” or “embezzlement”. In addition, debts arising from a breach of fiduciary duty may not be dischargeable in a bankruptcy proceeding.



the estate. If the estate owes a federal estate tax, the probate court may require that they be paid in full before a distribution to beneficiaries is made, even before the deadline for the payment of such taxes.

- (d) After each distribution, the distributees will be asked to sign receipts acknowledging receipt of the distribution which the court has approved for them. Receipts and disbursements made after the final accounting are shown on a supplemental accounting, which is provided to the probate court and the distributees. After the final distribution, when all distributees' receipts are filed with the court, the court will issue an order entitled "Final Discharge Order", which releases you from any further responsibility for the estate. At that point, the process of probate administration is completed.

6. CONCLUSION. The probate administration process will take your time and effort.

6.1 Time. It takes time to prepare petitions, inventories, and other court-required documents. There is a creditors' claim period that usually lasts 90 days (unless summary administration is allowed, in which case there is a 60-day creditors' claim period). Because of all this, it usually takes a *minimum* of six months to complete an uncontested estate. If federal estate taxes are owed to the IRS, the final distribution will not usually occur until at least 18 months after the decedent's death (or nine months after the estate tax return is filed, if longer). The sale of estate assets and disputes with beneficiaries, heirs, creditors, and other claimants can complicate matters and lengthen the time it takes to complete the probate process.

6.2 Effort. From the day of your appointment until you are finally discharged, the primary responsibility for the estate rests on your shoulders. Our task is to help ease your burden in every way possible, so if you need help, please let us know.

[END: Version of March 22, 2008]

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