Probate Administration

Taking care of a loved one's final wishes when there is or is not a will

This guide is not legal advice and is not a substitute for seeking assistance from a qualified attorney. Probate administration is complicated and involves decisions about what type of estate administration or proceeding to initiate, disbursement of funds, handling insolvent estates, and requirements to remit federal and state taxes. If you need guidance, you should consult an attorney.

WHAT TO DO WHEN A LOVED ONE PASSES

Take care of yourself and your loved one's final wishes and instructions. Secure and protect the decedent's (person who has passed away) money and property ("Preserve the Estate").

- **DON'T** close bank accounts or roll over any IRAs, 401(k)s, or other retirement plans until probate is underway and a personal representative (PR) is granted authority to do so (unless a named beneficiary has a right to do so).
- **DON'T** use or take money out of an individual account owned by your deceased loved one until PR has authority to do so (unless a named beneficiary has a right to do so).
- **CANCEL** services such as cable television, internet service, and phone service. If heirs are living in the home, they can open services in their names.
- **NOTIFY** any homeowner's insurance agent or company if the home is vacant. A higher premium may be required on homes that will be vacant, but insurance may not cover damage that occurs if the insurance company is not notified that the house was vacant.
- **NOTIFY** any auto insurance carrier that vehicles belonging to the estate will not be driven. This may reduce the premium. The policy should not be canceled until after probate is opened and the vehicle is sold or title is transferred to the new owner.
- **DON'T** use a power of attorney to pay bills or perform any other function for your deceased loved one. Powers of attorney are terminated (void) upon death.
- **NOTIFY** the Social Security Administration (SSA) of the decedent's passing. A funeral home may do this, but it is wise to call or contact SSA directly to claim any death benefit and find out if there are continuing benefits available for a surviving spouse or dependent minor children.
- **IF THE DECEDENT WAS A VETERAN,** contact the Veteran's Administration, as they may be entitled to additional benefits. Locally, you can contact your County Veteran Services Office or the NC Division of Veterans Service Center nearest to you.
- **IF THE DECEDENT WAS RECEVING A PENSION,** call the pension administrator to notify them of his/her passing.

This project is made possible through funding from NC IOLTA and carried out in collaboration with Charlotte Center for Legal Advocacy, Disability Rights North Carolina, Financial Protection Law Center, North Carolina Justice Center, Land Loss Prevention Project, Legal Aid of North Carolina, and Pisgah Legal Services.

PROCEDURE FOR ADMINISTERING AN ESTATE

When the Decedent Had a Will

1. Locate a Copy of the Decedent's Original Will

Prior to beginning the estate administration process, the executor (the person responsible for carrying out the wishes of the deceased) must locate the most recent original will (also known as Last Will and Testament). Testators (the now-deceased person who created the will) may keep their wills in unique places, but there are several common places to start the search:

- Testator's home, perhaps in a fireproof safe or filing cabinet
- Testator's bank in a safety deposit box (*see N.C. Gen. Stat. § 28A-15-13*)
- Clerk of Superior Court's office in the county of the testator's primary residence (*see N.C. Gen. Stat. § 31-11*)

It is important when locating the original will to verify that the document in hand is the last one created by the testator and has not been overridden by a newer document.

At the time the will is located, it may also be helpful to begin gathering other information that will be helpful as the process continues. This may include:

- A certified copy of the death certificate
- Details of any personal property (bank account numbers, personal loans or mortgages, vehicle or other titles, etc.)
- Details regarding any real property (i.e., real estate) owned by the decedent at the time of their death

2. Submit the Decedent's Will for "Probate" or Administration

Once the decedent's original will has been located, it must be submitted for "probate," which is the process through which the Clerk of Court's office determines the validity of the will before any property owned by the decedent at their death is distributed to their loved ones.

The estate of a North Carolina resident is administered by the N.C. County where the testator resided at their death. A different rule based on property location applies if the person did not reside in N.C. at death but still qualifies as a resident of the state. The will can also be filed in that county if the decedent owned property in the county and no estate was opened elsewhere.

This project is made possible through funding from NC IOLTA and carried out in collaboration with Charlotte Center for Legal Advocacy, Disability Rights North Carolina, Financial Protection Law Center, North Carolina Justice Center, Land Loss Prevention Project, Legal Aid of North Carolina, and Pisgah Legal Services.

Contacting the Clerk of Court's estates division is an important preliminary step, as the Clerk of Court's office can provide the executor with the required forms and will schedule an appointment to meet with the executor or share the walk-in policy, if applicable. Forms can also be accessed via this link: **nccourts.gov/documents/forms**

The Clerk of Court cannot provide legal advice but can share general information regarding the steps involved in the probate process. The probate process may differ depending on the size and content of the decedent's estate.

Process for "Small Estates"

In North Carolina, a "Small Estate" is defined as an estate wherein the value of any relevant personal property (i.e. *not* real estate) is less than $20,000 (or less than $30,000 if the surviving spouse is the sole inheritor).

If the estate is by law considered a "small estate" and if ***at least 30 days have passed*** since the death of the testator, an Affidavit for Collection of Personal Property of Decedent (Form AOC-E-203b) may be filed with the Clerk's Office in lieu of the full probate process (explored below). This certified affidavit may then be used to pay the testator's debts, handle any allowances permitted by law, and distribute the testator's assets to their loved ones, as dictated by the will. The affiant (person who swears to the affidavit) must distribute the property in the following order of priority:

1. Payment of the year's allowance (described below) of the surviving spouse and child(ren), if any
2. Payment of debts and claims against the estate
3. Distribution of the remainder of the personal property to heirs

Within 90 days of filing the affidavit, an Affidavit of Collection, Disbursement, and Distribution (Form AOC-E-204) must be filed confirming the debts paid, allowances made, and distributions or disbursements made to any heirs.

Note that there is also a further **expedited process** for surviving spouses entitled to full inheritance. These spouses may elect to file an Application for Probate and Petition for Summary Administration (Form AOC-E-905), which allows for a transfer of the entire estate (including debts) to the spouse with limited process (*see N.C. Gen. Stat. § 28A-28*). The spouse will assume the liabilities of the decedent spouse to the extent of the value of the property received.

This project is made possible through funding from NC IOLTA and carried out in collaboration with Charlotte Center for Legal Advocacy, Disability Rights North Carolina, Financial Protection Law Center, North Carolina Justice Center, Land Loss Prevention Project, Legal Aid of North Carolina, and Pisgah Legal Services.

Process for Probate, Generally

For all other estates, the executor should submit the decedent's will to the Clerk using an Application for Probate and Letters Testamentary (Form AOC-E-201). This form assists in completing the first two steps at once. The executor can both

1. Qualify themselves as the person responsible for administering the estate
2. Complete a preliminary report of the decedent's assets

In addition to the application, the executor should be prepared to submit the following:

- Decedent's original will
- Certified copy of the death certificate
- Filing fee, currently $120 (personal checks are not accepted)
- Estates Action Cover Sheet (Form AOC-E-650)
- Notarized Oath/Affirmation (Form AOC-E-400) to demonstrate the executor's belief that the will is valid and to demonstrate their commitment to honestly carrying out the duties required under this role
- Notice to each named beneficiary (a loved one being gifted something through the document) in the will
- Order Authorizing Issuance of Letters (Form AOC-E-402), which will be signed by the Clerk if they determine that the applicant is entitled to administer the estate

Note that additional requirements, including payment of a bond, may exist for out-of-state applicants (see N.C. Gen. Stat. § 28A-8-1(b)(6)).

Once the Clerk authorizes it, they will issue the letters through Form AOC-E-403, which authorizes the executor to receive and administer the estate's assets. It is important that the executor obtain several certified copies of this document as it attests to the powers and authority bestowed upon them for the duration of the probate process.

The Clerk will issue a Certificate of Probate (Form AOC-E-304) upon accepting the will for probate.

Once the executor has been given the authority to proceed with the process, and once the will has been deemed valid by the Clerk, the executor can move forward with notifying the decedent's creditors, paying debts and taxes, and distributing the estate's assets.

This project is made possible through funding from NC IOLTA and carried out in collaboration with Charlotte Center for Legal Advocacy, Disability Rights North Carolina, Financial Protection Law Center, North Carolina Justice Center, Land Loss Prevention Project, Legal Aid of North Carolina, and Pisgah Legal Services.

3. Year's Allowance (*if applicable)*

A surviving spouse and/or dependent children may be entitled to a "year's allowance." This is a priority claim paid out *prior* to the payment of any of the estate's creditors. An application can be made through the filing of a Petition and Assignment of Year's Allowance (Form AOC-E-100). For decedents who died on or after March 1, 2024, the surviving spouse may be entitled to $60,000, and each surviving child may be entitled to $10,000, to be paid from the funds or personal property of the decedent.

4. Notifying Creditors

The executor must post a notice for creditor's claims against the estate (meaning, a call for anyone to come forward who claims that they are owed money by the decedent) in a county newspaper once a week for four (4) consecutive weeks. The newspaper must be "qualified to publish legal advertisements" and the notice is to be published in the county where the estate is being administered. Alternatives are available in certain defined circumstances. This notice should include a date no sooner than three (3) months from the date of first publication by which any creditors must submit a claim.

If the executor is aware of certain creditors, or could reasonably become aware through their own investigation, they must also deliver notice by first-class mail to those creditors. Note that there is an exception to this requirement for any debts that the executor already recognizes as valid and has paid or intends to pay.

Following publication, and the mailing of notice (if applicable), the executor must file an Affidavit of Notice to Creditors (Form AOC-E-307).

5. Filing an Inventory

Within three (3) months of being qualified as the executor by the Clerk, the executor must file an Inventory for Decedent's Estate (Form AOC-E-505). This inventory typically includes a description and value for any real or personal property owned by the decedent at the time of their death. The court will likely require bank statements and proof of care value to be filed along with an inventory.

The executor should obtain copies of signature cards and deposit contracts associated with any joint accounts from the depository financial institution and submit them with the inventory.

This project is made possible through funding from NC IOLTA and carried out in collaboration with Charlotte Center for Legal Advocacy, Disability Rights North Carolina, Financial Protection Law Center, North Carolina Justice Center, Land Loss Prevention Project, Legal Aid of North Carolina, and Pisgah Legal Services.

Property discovered after an inventory has been filed must be reported on a supplemental inventory. Income of the estate, property acquired by the estate after the decedent's death, or asset conversions (for example, sale of real estate or stock, foreclosure of deed of trust, etc.) must be reported on the next accounting.

6. Real Estate

Generally, title to real estate will pass outside of the probate process, and ownership goes to the chosen recipients immediately upon the decedent's death. Exceptions include when the will states otherwise or when the sale of the land or home is required to pay the estate debts. No deed is provided as part of the probate process.

7. Payment of Claims

Once the date has passed that was provided in the Notice to Creditors, the executor must begin to pay all valid debts in the order of priority designated by statute (*see N.C. Gen. Stat. § 28A-19-6*).

Note that the executor is responsible for filing a timely income tax return on behalf of the decedent and paying any taxes for the decedent and the estate, if applicable, due to the appropriate taxing authorities.

8. Distribution of the Assets

After the executor has paid any costs associated with administration, any valid creditor claims, and attorney's fees (if applicable), they may distribute the remainder of the estate according to the terms of the will.

9. Final Accounting

After the date provided in the Notice to Creditors, the executor *may* file a Final Accounting if all claims have been satisfied. The executor *must* file a Final Accounting within one year of their qualification unless granted an extension by the Clerk. If the estate cannot be closed within one year, an annual accounting is required.

As may be apparent, depending on the size of the estate, **the administration process may take as little as a few months or as long as a few years**. Given that the process may be complicated or cumbersome, it can be advisable for the executor to work with a qualified attorney to prepare and administer the estate.

This project is made possible through funding from NC IOLTA and carried out in collaboration with Charlotte Center for Legal Advocacy, Disability Rights North Carolina, Financial Protection Law Center, North Carolina Justice Center, Land Loss Prevention Project, Legal Aid of North Carolina, and Pisgah Legal Services.

When There is a Will Caveat Proceeding

A caveat proceeding is filed by a party challenging the validity of a will submitted for probate. It may include claims that the will is legally invalid (undue influence, lack of capacity to execute a will, forgery, revocation) and/or that an earlier or later will controls.

If an heir is served with notice of a challenge (caveat) to the will, it is best to consult with a lawyer for advice and legal representation.

A lawyer can help determine the strength of the caveat challenge to the will and whether it is worth attempting to settle with the party on acceptable terms.

Heirs should always respond to court notices, deadlines, and hearing dates and must appear in court if the heir wishes to join sides ("align") with one of the opposing sides in the caveat.

When the Decedent Did Not Have a Will ("Intestate")

1. Administrator of the Estate

It is important not to delay estate administration as time is of the essence.

Family members should discuss who would be best suited to apply to be the administrator of the estate. "Administrators" are the fiduciaries (someone in a position of trust and authority to manage property for the benefit of another) appointed by the court when a person dies without a will. "Personal Representative" is a term used to refer to both executors and administrators.

Without agreement, the Clerk will likely appoint, in order:

1. A surviving spouse
2. Anyone who would receive property from the estate
3. Any next of kin
4. Creditors of the decedent
5. Anyone of good character living in the county

A person who applies to be the administrator of the estate should obtain a certified death certificate and take the certificate to the Clerk of the Superior Court in the decedent's county. The Clerk of Court cannot give legal advice but can share what steps are involved in the probate process.

This project is made possible through funding from NC IOLTA and carried out in collaboration with Charlotte Center for Legal Advocacy, Disability Rights North Carolina, Financial Protection Law Center, North Carolina Justice Center, Land Loss Prevention Project, Legal Aid of North Carolina, and Pisgah Legal Services.

As described earlier, smaller estates may qualify for streamlined administration (*see "The Process for 'Small Estates'" above).*

If no streamlined procedure is available, the person who wishes to administer the estate should petition the Clerk to be appointed "Administrator of the Estate" (for practical purposes, the same as an executor but for those who passed without a will).

This person will need a preliminary inventory of the decedent's estate (the form is available online or at the Clerk's office) and will need a general knowledge of the decedent's real estate, bank accounts, stocks, bonds, motor vehicles, and other personal property, and estimated value of these assets at time of death, to complete the inventory. There is also a filing fee.

If appointed, the administrator will receive "Letters of Administration" from the Clerk to be used with institutions to prove authority as administrator. An administrator of an estate is required to furnish a bond unless all the heirs are 18 years of age or older, of sound mind and have filed written waivers. No bond is required if the administrator is the sole heir.

2. Duties of an Administrator

The administrator must identify and locate the heirs. The determination of heirs is set forth by statute when there is no will present (*see N.C. Gen. Stat. § 29-1-30*). Determining the proper heirs is critical and the administrator can benefit from the assistance of an attorney.

The administrator must also identify the assets of the estate (bank accounts, personal property, real estate, 401(k)s, etc.). The administrator should have already done most of this for the preliminary inventory. The administrator will need to obtain date of death values for all estate assets.

The administrator should open a checking account for the estate for use during the estate administration process to pay the decedent's debts, funeral expenses, court and administrative fees.

3. Notifying Creditors

The administrator must post a notice for creditor's claims against the estate (meaning, a call for anyone to come forward who claims that they are owed money by the decedent) in a county newspaper once a week for four (4) consecutive weeks. The newspaper must be "qualified to publish legal advertisements" and the

This project is made possible through funding from NC IOLTA and carried out in collaboration with Charlotte Center for Legal Advocacy, Disability Rights North Carolina, Financial Protection Law Center, North Carolina Justice Center, Land Loss Prevention Project, Legal Aid of North Carolina, and Pisgah Legal Services.

notice is to be published in the county where the estate is being administered. Alternatives are available in certain defined circumstances. This notice should include a date no sooner than three (3) months from the date of first publication by which any creditors must submit a claim.

If the administrator is aware of certain creditors, or could reasonably become aware through their own investigation, they must also deliver notice by first-class mail to said creditors. Note that there is an exception to this requirement for any debts that the administrator already recognizes as valid and has paid or intends to pay.

Following publication, and the mailing of notice (if applicable), the administrator must file an Affidavit of Notice to Creditors (Form AOC-E-307).

4. Filing an Inventory

Within three (3) months of being qualified as the executor by the Clerk, the administrator must file an Inventory for Decedent's Estate (Form AOC-E-505). This inventory typically includes a description and value for any real or personal property owned by the decedent at the time of their death. The court will likely require bank statements and proof of car value to be filed along with an inventory.

The administrator should obtain copies of signature cards and deposit contracts associated with any joint accounts from the depository financial institution and submit them with the inventory.

Property discovered after an inventory has been filed must be reported on a supplemental inventory. Income of the estate, property acquired by the estate after the decedent's death, or asset conversions (for example, sale of real estate or stock, foreclosure of deed of trust, etc.) must be reported on the next accounting.

5. Communicate with the Clerk's Office

It can be difficult to administer an estate. The administrator should stay in contact with the Clerk's office so that they can grant an extension of time if necessary.

6. Payment of Claims

Once the date has passed that was provided in the Notice to Creditors, the administrator must begin to pay all valid debts in the order of priority designated by statute (*see N.C. Gen. Stat. § 28A-19-6*).

This project is made possible through funding from NC IOLTA and carried out in collaboration with Charlotte Center for Legal Advocacy, Disability Rights North Carolina, Financial Protection Law Center, North Carolina Justice Center, Land Loss Prevention Project, Legal Aid of North Carolina, and Pisgah Legal Services.

Notice that the administrator is responsible for filing a timely income tax return on behalf of the decedent and paying any taxes for the decedent and the estate, if applicable, due to the appropriate taxing authorities.

7. Distribution of Assets

After paying the costs of administration, taxes, and other valid claims against the estate, the personal representative must distribute the remaining assets of the estate to the intestate heirs. It is advisable (and possibly required) to ask beneficiaries to sign a receipt and release acknowledging the distribution and releasing the administrator from liability. If the administrator distributes property and a valid debt is discovered, the administrator will be personally responsible for the debt if they can't get the money back from the distributee.

8. Final Accounting

The personal representative must file a final accounting within one year of the date on which he or she qualified to serve, unless the Clerk has granted an extension of time for good cause. If an extension has been granted, an annual accounting with a request for the estate to remain open must be filed within one year of the date of qualification (and each year thereafter).

9. Close the Estate

The administrator must petition the Clerk to certify completion of duties as personal representative and asking for a discharge from that role. If the administrator was required to obtain a bond, the discharge allows the administrator to cancel the bond.

WHAT TO DO WHEN A PUBLIC ADMINISTRATOR HAS BEEN APPOINTED

A public administrator is not an adversary. They are simply a stand-in for a personal representative, tasked with winding down the estate if no administrator has been appointed within six months of death.

The public administrator is not a family member. As such, they will lack intimate knowledge of assets and heirs. It is best for family members and heirs to communicate openly with the public administrator and work with them to facilitate administration of the estate efficiently.

This project is made possible through funding from NC IOLTA and carried out in collaboration with Charlotte Center for Legal Advocacy, Disability Rights North Carolina, Financial Protection Law Center, North Carolina Justice Center, Land Loss Prevention Project, Legal Aid of North Carolina, and Pisgah Legal Services.