

Manual for After Death Administration of Trusts and Estates in North Carolina

Introduction

“Any darn fool can make something complex; it takes a genius to make something simple.”

— Pete Seeger

Probate law is a complex, emotionally charged matter. As someone who has lost a loved one, you are at the beginning stages of the grieving process. You may feel confused about how to regain control of your life and ensure that your loved one's wishes are carried out.

Challenges abound – some anticipated, some that will surprise you. For instance, unethical family members could disregard terms of the will or get involved in heated disputes; creditors or taxes could threaten to deplete the estate; and complex legal concerns related to the probate process could suck you in, consuming your time and mental energy for months.

No matter what the probate process throws your way, this guide can help you make sense of the confusion and stay grounded.

Over the coming pages, we will educate you about what to expect, giving you a solid foundation to make decisions that will honor your loved one and his or her wishes. This is not a comprehensive guide. For more detailed guidance and specific legal help, seek the assistance of a qualified probate lawyer.

Here's what you will learn in this primer:

- An introduction to key probate concepts and terms
- A review of the probate process, touching on everything from dealing with property to administering trusts
- What to expect during the estate administration process

- An overview of the trustee's responsibilities
- The importance of maintaining peace among heirs, and how to do it effectively
- How to handle estate disputes fairly
- Examples of common trust disputes and how to work through them
- How to stay organized, keep things simple, and make the process easier
- Tips for choosing and working with a probate attorney
- Clear steps for relieving stress, maintaining peace, and keeping a clear mind

The probate process is not easy. It requires a strategy and some planning. This guide will help you create a plan and keep you focused on the end goal without allowing your case to take over your life.

Section 1: Introduction to Probate Law

“To every thing there is a season, and a time for every purpose under heaven.”

— Ecclesiastes 3:1

Probate governs the management of a deceased person's assets and liabilities. It is a legal process that involves a court and at least one attorney.

When you are healthy and alive, you can decide how you want to invest, protect and distribute your assets. When you die, however, it obviously becomes tricky to determine your wishes or intentions. Friends, family members, creditors and the government can become enmeshed in debate over nuances regarding what you meant, and you sadly cannot intervene to clarify.

How does the law handle this challenge? It allows the living to publish legal documents to indicate their wishes after death.

Heirs and other survivors of the deceased work through the probate process to validate the loved one's will and to settle the estate, which often involves paying off outstanding debt. What is left after paying off debt is distributed in an organized fashion according to the wishes of the deceased to ensure fairness, to limit chaos and to keep the process moving along.

The Three Phases of Probate

Every estate goes through three probate phases. Large estates can be more complicated, but even simple estates involving few assets and limited debt must move through these three phases:

1. **Appointment.** Someone must be appointed to manage the process. If there is a will, this manager is named in the will and called an *executor*. If

there is no will, the person is called an *administrator*. Both terms are used to describe the estate's *personal representative*. This person has a lot of power to make decisions on behalf of the estate.

2. **Administration.** The personal representative of the estate handles all of the details of estate administration. In this phase, critical decisions are made concerning, among other things, who receives what assets; the order of distribution of those assets; what assets must be sold and at what price point; how the proceeds of such sales should be distributed; and what happens to sentimental items or assets not mentioned in the will or other estate documents. The personal representative must operate within a legal framework. Every state has its own laws about how estates should be administered. However, estate representatives do have a lot of power within the law to make decisions. If an untrustworthy or dishonest person is selected as the personal representative of an estate, that person can do a lot of damage, unless someone steps forward to stop him or her.
3. **Closing** – Finally, the estate is closed. After all debts have been paid and the assets distributed, the personal representative is relieved from duty. This process works differently in different states. However, executors and administrators are generally shielded from legal action after the estate is closed. Anyone who wants to contest the estate representative's performance must do so before the end of the final phase.

While many estates move through these three phases without conflict, opportunities abound throughout the process for conflict to arise. Legal provisions allow for parties to challenge the actions of the personal representative of the estate. That's why you must be diligent, do things in the proper order and handle the deceased's affairs in an organized manner according to the prescriptions of the law.

(THIS WOULD BE A GOOD PLACE TO DISCUSS STATE-SPECIFIC DIFFERENCES)

What Assets are Subject to Probate, and How Long Does the Process Take?

Not all assets are subject to probate. Assets owned outright by your deceased loved one will be included in the estate. However, if the deceased merely held an interest in an asset that was jointly owned with someone else, then the other party may be able to claim ownership of that asset without going through the probate process. For instance, real estate held in joint tenancy with a spouse, if that spouse had survivorship rights, would not be subject to the probate process.

Under another scenario, if the deceased transferred certain assets to another party prior to death, those assets would not be subject to probate either. However, the law does allow such exchanges to be challenged if foul play is suspected.

In addition, some states have provisions for simplified probate processes if an estate is small and uncomplicated.

(THIS WOULD BE A GOOD PLACE TO DISCUSS STATE-SPECIFIC DIFFERENCES)

In terms of length, several factors come into play. How large is the estate? Are there complex tax or debt situations involved? Is the personal representative a competent and able administrator? Do conflicts or legal challenges arise that cause delays in the distribution of assets?

An uncontested estate can be settled in as little as a year. With competent legal help from a qualified probate attorney, the process could be even shorter. However, situations involving complex estates, disputes and court challenges can unfortunately sometimes last for years.

What Is a Legal Emergency?

You may feel an urgent need to take action. Maybe you don't want to waste time, or you are anxious to get busy dispatching your legal duties, so you can forget about the pain you feel at the loss of your loved one. This is quite normal. However, this feeling of urgency doesn't constitute a *legal* emergency.

When managing an estate, there are four legal emergencies that require immediate attention. These include:

- **Someone is taking assets from the estate or trust without authorization.** These assets could include money, jewelry, sentimental items, personal property that belonged to your loved one, real estate, or something else. The person taking these items may have a legitimate claim to them, but no one should take assets without the personal representative distributing them at the proper time.
- **A creditor is taking action to foreclose or repossess property that belongs to the estate or trust.** Again, the creditor could cite legitimate reasons for such action, but it constitutes the immediate attention of the personal representative.
- **Your deceased loved one was a partner or sole proprietor of a business that is still operating.** Someone needs to handle the immediate affairs of the business and make certain decisions on behalf of the deceased while the probate process proceeds. Failure to take such action could lead to the devaluation of the business and the estate.
- **A court deadline or hearing date is approaching.**

In any of these situations, certain actions must be taken to preserve the estate and protect the rights of all involved. **To manage a legal emergency, consult with a qualified, trustworthy probate attorney at once.** Otherwise, take time to read through this guide in detail. You want to understand the process clearly before you start performing tasks associated with managing the estate.

Probate Terms and Concepts You Should Know

- **Administrator.** If there is no valid will, the court will appoint an administrator to act as the personal representative of the estate.

- **Beneficiary.** Anyone – a real person or an institution – named in the will as an inheritor of assets is a beneficiary. Other legal documents, such as insurance policies and trusts, name beneficiaries that may or may not coincide with the beneficiaries of the estate.
- **Creditor.** If the deceased owed money to a person or institution at the time of death, the entity owed money is called a creditor.
- **Executor.** The individual named in a will who is responsible for making decisions on behalf of the estate.
- **Heir.** An heir is anyone named in a will or in estate documents – or, in the absence of such documents, who is prescribed by law to inherit an estate or part of an estate. There may be more than one estate heir.
- **Intestate.** When a person dies without drafting a will, that person is said to have died *intestate*. In such cases, state law prescribes who should be in line to inherit an estate based on the relationship to the deceased.
- **Nomination.** In the absence of a will, a personal representative of the estate must be nominated. The court determines the qualification of the nominee, who then must take an oath to become the personal representative of the estate.
- **Personal Representative.** The individual named in estate documents or appointed by a probate court to make decisions on behalf of the estate. The personal representative is an executor if named in a will. If there is no will, the person is called an administrator.
- **Petitioner.** When someone files a petition to ask the court to take some action, he or she is called a petitioner.
- **Testate.** This means the deceased had a valid will at the time of death.

- **Trust.** A type of legal document where property can be held for specific reasons and for specific benefits. A trust must be managed by a *trustee* designated by the person who sets it up for the benefit of its beneficiaries.
- **Trustee.** The person appointed to carry out the desires of the individual who sets up a trust.
- **Will.** A legal document that outlines a deceased person's wishes for how his or her assets will be divided and distributed among heirs.

Urgent Action Items

This list of action items represents tasks that you must get started on right away. Not all tasks are urgent. These tasks should be started now, so that you don't hold up the probate process, and because later tasks are dependent upon these earlier tasks being completed or started. Some of these tasks take a while to complete, and that's another reason to get started promptly.

1. **Find out whether the deceased left a will.** Whoever possesses the will must file the document with the appropriate probate court. If the deceased had a safe deposit box, the will may have been kept there. Another likely place is a home safe or lock box. Some people leave their wills with a trusted loved one, so ask the siblings, spouse or children of the deceased. If a trust is involved, the trustee may hold the will. A lawyer, financial adviser or doctor may also know where your loved one's will is kept.
2. **Submit a life insurance claim.** Insurance claims can take a long time to settle. It's possible that the carrier will wait until probate enters phase two. Don't be alarmed if that occurs. Nevertheless, you should submit the insurance claim as soon as possible after filing the will with the probate court.
3. **Identify other projects/tasks that are urgent or critical.** Determine whether there are any legal emergencies. You may need to consult a probate attorney for actionable advice. If the deceased owned a business

that is still in operation, then someone will need to manage the affairs of that business so that it doesn't lose value for the estate. If the deceased had young children, those children may need someone to look after them. Go on a fact finding mission to identify possible urgent or critical matters, and notify the probate court of those situations.

Other Tasks That Need Your Attention

1. **Collect all the necessary documents.** The deceased should have certain legal documents, such as bank, credit card statements and medical records. Collect all the documents that will be handled by the estate, including anything related to business as well as the deceased's personal matters.
2. **Take inventory of the estate.** Make a list of all of the estate's assets. Be detailed. You need to secure the estate, so that no one attempts to distribute the assets prematurely. State laws are strict about who should receive what, and in what order assets should be distributed. The estate needs to pay creditors before it distributes assets to heirs. A greedy relative in desperate straits may try to get you to release assets too soon. You must reject these attempts.
3. **Secure the estate.** *Let's reiterate this: Under no circumstances should you distribute assets to heirs before you secure the estate and close all personal accounts.*

Call the car insurance carrier, and notify the company that no one is driving the car. Also, call the home insurance company and let the carrier know that no one is living in the home. Protect all other assets from the weather and vandalism. Put cars in garages, and lock jewelry in a safe. Secure equipment, art, antique items, and other valuables (including those of sentimental value), and keep them away from anyone who may want to retrieve them before you open the estate.

4. **Close personal accounts.** These accounts include internet service, cable TV

subscriptions, newspaper and magazine subscriptions, country club and professional association memberships, electric and water company accounts, and any other personal accounts the deceased may have had.

5. **Open the estate.** How you open the estate depends on whether or not the deceased left a will. It may be necessary to open the estate before you have the legal authority to discuss matters with creditors and financial institutions. Once you get an order from the probate court to open the estate, you can then begin the process of paying off creditors and distributing assets to the heirs.

This checklist should get you started on managing the estate effectively. The key is to stay organized and on track with your loved one's business affairs. Plenty of other tasks await, but take these actions to get the process moving. Along those lines, you will likely need professional advice. Strongly consider getting trusted assistance from a qualified probate attorney as well as a financial adviser.

In the next section, we will discuss what happens during uncontested probate proceedings and review the essential tasks associated with estate and trust management.