

HOW TO FILE CERTAIN TYPE OF ACTIONS IN THE REGISTER OF WILLS OFFICE



Disclaimer

Neither the staff in the Center nor the staff in any Court office will be able to give you legal advice or help you fill out/complete the forms. The information in the packets is not to be a substitute for professional legal advice. The Court assumes no responsibility and accepts no liability for actions taken by users of these documents, including reliance on their contents. If you want to obtain the services of an attorney but do not know whom to contact, you may call the Lawyer Referral service at 393-0737.

INTRODUCTION

When someone dies, the assets they owned become part of their estate, and the debts they owed are liabilities of their estate. A “personal representative” must be formally appointed to administer the estate. The personal representative is responsible for the proper administration of the estate, which includes tax issues. It is recommended that you at least speak to an attorney so you understand your rights and responsibilities.

If you decide to represent yourself in the administration of the estate, it may take a lot of time and may entail much difficulty, confusion, and frustration. You will have to follow the Rules of Court and the tax laws just the same as an attorney. The Court and taxing authorities will not allow you to skip any procedures because you “did not know how or when” to do something. This packet of information is not to be a substitute for professional legal advice tailored to a specific fact situation.

The Register of Wills Office in the Courthouse CANNOT GIVE YOU LEGAL ADVICE.

If you feel you need an attorney, you can contact the Lancaster Bar Association.
Telephone 717-393-0737.

Probating a Will

Frequently asked Questions

Must all wills be probated? Can money distribution be made to heirs without probate?

If there are no assets in the decedent's name alone, the will does not need to be probated.

There are cases where distribution can occur without a will being probated:

Any bank or other savings organization may release up to \$3,500 to family members when:

- the decedent's accounts do not exceed \$3,500
- the funeral bill has been paid, and the receipt is presented

Life insurance companies may release certain monies under \$11,000 to named family members, rather than to the estate.

Certain patient accounts (not exceeding \$4,000) which have been kept by various health care institutions may be paid to the funeral director and/or to the family without probate.

Stocks and bonds physically noted "T.O.D." (transferable on death) or "P.O.D." (payable on death) may pass to heirs without probate

"Unclaimed funds" under \$11,000, held by the Commonwealth of Pennsylvania, may be applied for without probate.

If someone dies, where will I find the will?

Wills for living persons are not "registered" and stored at the Register of Wills office. Wills are typically filed in the office of the Attorney who prepared the will, in the vault of a trust department, or in a private safety deposit box belonging to the person who wrote the will.

What happens if I can't find the will?

Keep looking, it is very important to find it. In rare cases, a copy of the will can be admitted to probate, but all interested parties must sign affidavits, which must be filed with the Register of Wills.

What if I know there is no will?

If the decedent died without a will (intestate), then the Register of Wills will grant *Letters* to the following (in the prescribed order):

1. Surviving spouse
2. Intestate heirs
3. Principal creditors of the decedent
4. "Other fit persons"

What must be legally done with the will?

The executors must report to the court house of the county where the decedent was legally domiciled at the time of death with the following items:

A completed petition for probate and grant of letters. (These forms are included with this packet)

The original will, all codicils, and/or any related documents giving direction as to how property should be disposed upon death

A death certificate

Appearance of executor(s)

Witnesses to will (*unnecessary if will is *self-proven*)

Sworn English translation if will is written in a foreign language

A check or cash to cover probate fees

Probate fees are due to the Register of Wills at the time of probate. The costs, based on the value of the estate, are documented on the enclosed fee schedule. (A current fee schedule can be obtained at the Register's office)

*If a notarized self proving affidavit is attached to the original will, the will is considered *self-proven*. If the will is not self-proving, two subscribing witnesses (witnesses who signed the will) must prove the signature of the decedent. If the witnesses to the will are available, they must sign an Oath of Subscribing Witness form(included in this packet) If they cannot be located, then two persons familiar with the signature of the decedent must sign an Oath of Non-Subscribing Witness, stating that they believe the signature on the will to be that of the decedent.

I have been named executor, but I do not want to serve. Can I get out of it?

Yes. You need to file a document with the Register of Wills called a "Renunciation"(included in this packet). That basically means you are turning down the job of executor. The contingent executor named in the will takes over at this point.

What must I do if I am named executor?

Responsibilities of executors vary greatly from estate to estate, depending on the particular circumstances of the decedent. However, there are certain forms that are required to be filed in all estates.

Notice must be given to all beneficiaries named in the will, and spouse and children if there is no will, of the death of the decedent and the appointment of the personal representative. A copy of the probated will may be sent to those named in the will.

Certification of Notice must be filed with the Register of Wills verifying that the personal representative has sent these notices.

One of the major responsibilities of the personal representative is to determine what assets the decedent had in his name alone (probate assets) and are, therefore, under the control of the personal representative and subject to distribution under the terms of the will.

These assets may be cash, bank accounts, stocks and bonds, investment accounts, personal property, business interest, real estate, life insurance and/or retirement benefits.

These assets may be subject to Pennsylvania inheritance tax and possible federal estate tax, if the gross estate is over \$1,000,000.00 (2003). Therefore, these assets must be valued as of date of death and reported as such on the death tax returns.

Outstanding debts of the decedent, along with funeral expenses and estate administration expenses, must be determined and paid out of the estate assets before any distributions to beneficiaries. These debts and expenses are allowable deductions for Pennsylvania inheritance tax and federal estate tax purposes.

If the estate is insolvent (debts exceed assets), then the personal representative is responsible to pay claims based on a schedule of priority of payments.

Can the Register of Wills guide me through estate administration or must I seek legal counsel?

There are two concerns that every personal representative shares. One is that the estate is administered properly according to law and the second is that the amount of taxes paid is minimized and the amount of assets passing to beneficiaries is maximized.

The Register of Wills is only a **record-keeping office** and the clerks are not trained or licensed to give legal advice. Estate administration is typically conducted more effectively and efficiently with the assistance of legal counsel. Estate administration is an orderly process that is designed to insure that the will of the decedent is carried out and the interest of all parties to the process are protected.

It is the duty and obligation of the personal representative (executor or administrator) to protect estate assets and pay all proper taxes and claims. A personal representative is personally responsible for improper distributions.

It is often necessary to review and interpret many documents and legal contracts, such as insurance policies, employee benefit information, income tax returns, stock, bonds, and business agreements.

What is a short certificate?

A short certificate is a document issued by the Register of Wills after the will has been probated. It evidences the appointment of the personal representative to administer the estate. This document allows the personal representative to act on behalf of the estate to close bank accounts, file final income tax returns, process pension benefits, and close brokerage accounts. The current charge is \$5.00 per certificate and each bank, etc. will require an original. It is called a short certificate because it is a one-half page form.

How do I know how much I have to pay in taxes? When do I have to pay them?

There are three types of taxes to be considered: Pennsylvania inheritance tax, federal estate tax, and income tax. Pennsylvania inheritance and federal estate tax returns are due nine months after the date of death, unless an extension is obtained. The personal income tax return of the decedent is due the April following the death.

PENNSYLVANIA INHERITANCE TAX :

The current tax rate is 0% on transfers to spouses and charities, 4.5% on transfers to “lineal” decedents (parents, grandparents, children, stepchildren, sons and daughters-in-law), 12% on transfers to siblings (brothers and sisters, half-brothers and sisters, and persons having at least 1 parent in common with the decedent either by blood or by adoption), and 15% on transfers to any other person.

A discount of 5% of the tax due is allowed for whatever portion of the tax is paid within 3 months of the decedent’s death.

The return and instruction booklet are available in the Register of Wills’ Office. This office serves only as an agent for the Commonwealth in the collection of inheritance tax and cannot help with the preparation of the return. The return is filed with Register of Wills and the tax check should be made payable to “Register of Wills, Agent.” After the return is filed, it will be audited by the Pennsylvania Department of Revenue and an Appraisement will be issued notifying you if the return was accepted, or if changes were made resulting in a change in the amount of tax due.

All assets owned by the decedent alone or jointly with others (other than a spouse), and some assets transferred by the decedent during his lifetime are taxable. Life insurance is not taxable. Deductions are allowed for the funeral expenses, debts of the decedent, and estate administration expenses.

FEDERAL ESTATE TAX:

For deaths in the year 2003, estates with taxable assets (including life insurance) of under \$1 million are not required to file a return. In cases where the taxable assets exceed \$1 million, a return must be filed with the Internal Revenue Service. Under current law, the size of the estate requiring a return increases over the next several years (in 2004 the limit will be \$1.5 million). Returns and instruction booklets may be obtained from the IRS. The return should be filed and the tax paid to the IRS in Cincinnati, Ohio. A copy of the return must be filed with the Register of Wills. After it is filed, the IRS will issue a "closing letter" notifying you if the return was accepted.

INCOME TAX:

Final lifetime income tax returns must be filed with the IRS and the Pennsylvania Department of Revenue on or before April 15 of the year after death. Those returns cover the period from January 1 to the date of death.

Beginning the day after death, the estate becomes a separate income taxpayer and "fiduciary" income tax returns must be filed. They cover the remainder of the year of death and, if so elected, can cover a longer fiscal year.

NOTE: There are many intricacies in state and federal tax law as it relates to death taxes and competent advisors should be retained to assist with tax filings.

When can distributions to beneficiaries be made?

Distributions to beneficiaries can be made only after:

- (1) all inheritance and estate taxes have been paid
- (2) you have received the Pennsylvania Appraisal and the IRS Closing Letter (if required)
- (3) all of the other claims against the estate have been paid

If there is no will, the assets must be distributed according to the Pennsylvania Intestate Law. The vast majority of estates administered in Lancaster County are closed "informally" or "out of court" which means that the accounting of the estate assets and expenses is presented to the beneficiaries, along with a release document. The beneficiaries approve this accounting and permit the personal representative to proceed with distribution.

However, there are occasions when the accounting must be filed with the Orphan's Court and an Adjudication issued by the Orphan's Court Judge. Some examples of when this process is followed would be if the will is ambiguous, there are family disputes, there are outstanding creditors, or if there are minor beneficiaries involved.

The accounting and a Petition which includes a proposed schedule of distribution are filed with the Court, and all parties of interest are given notice of the audit date. They may appear in Court at that time to voice any objections. The Orphan's Court Judge will then issue his adjudication based on the information presented to him. This Court process is more expensive and can delay the closing of the estate anywhere from 3 months to over 1 year.

At what point are my duties as executor concluded?

When you have done all that is necessary before distributing assets to beneficiaries (see question above), and then distributed the assets, it is time to file final fiduciary income tax returns with the IRS and Pa. Department of Revenue. You must also file a final Status Report in the Register of Wills' Office. If you had the beneficiaries sign release documents, they should also be filed in the Register of Wills' Office. Your duties as executor are then complete.

The administration process takes an average of one year, but can be completed in as little as 3 months or as long many years, depending on the complexity of the estate.

Someone who owes me money has died. How do I collect?

In most cases, if you notify the personal representative of your claim and he believes it to be a valid claim, he will pay it promptly. If the personal representative does not agree to pay the claim promptly, or if the estate assets are not sufficient to pay it in full, you should enter a formal claim in the estate proceedings.

Generally, a claim against a decedent's estate must be filed within one year of the decedent's death, or at or prior to the call for audit by the Orphans' Court of the personal representative's account.

To file a claim, you must do the following:

1. Obtain from the Register of Wills the file number for the estate, the name and address of the personal representative of the estate, and the name and address of the attorney for the estate.
2. Complete a Claim form (attached) in which you identify the estate, your name and address, the character of your claim, and the amount of the claim.
3. Take the original and three copies of the Claim form to the Register of Wills' Office, file the original, and have three copies time-stamped. You should then send one time-stamped copy to the personal representative, and one to the attorney. The third copy is for your records.
4. Contact the personal representative after the claim has been filed to determine if the personal representative will agree to pay the claim. If so, request prompt payment, or obtain written agreement from the personal representative concerning payment.
5. If you do not receive payment when due, or if the personal representative will not agree to pay the claim, and you wish to pursue the matter, you should contact an attorney to initiate the appropriate proceedings in the Orphans' Court.

GLOSSARY

Annuity: A contract between an insurance company and an individual. The company agrees to provide an income for a specific period in exchange for money.

Appraisal: A good faith estimate of the fair market value of real estate or personal property.

Beneficiary: The person who is named in a Will or Trust Agreement to receive the proceeds from an estate or trust. A beneficiary can be an individual or an organization.

Claimant: A person, corporation or other party who files a legal claim asserting a right to property or money from the deceased person's estate.

Creditor: A person, corporation or other party who is owed property or money from the deceased person's estate. A creditor does not become a "claimant" (see above) until he or she files a legal claim.

Decedent: Another word for the deceased person.

Estate: The deceased person's property.

Executor: The person or trust company who administers the Will.

Fiduciary: A person or trust company with a duty to act for the financial benefit of another person, or according to the financial instructions of another person, in a responsible way. A trustee is one example of a fiduciary.

Guardian: A person or trust company named to take care of the deceased person's minor children or their property.

Heir: A person entitled to a portion of an estate, if there is no Will. (If there is a Will, those who inherit are legally called "beneficiaries," not "heirs")

Intestate: Having died without a will.

Inventory: The list of the deceased person's real and personal property, compiled by the personal representative and filed with the court.

Letters: A generic reference to orders appointing executors or administrators.

Letters of Administration: The order officially appointing the personal representative of an estate, when the person died without a Will or without an executor.

Letters Testamentary: The order officially appointing an executor of an estate where the deceased person had a Will.

Notary Public: A person authorized by the state to officially recognize that documents have been signed, and officially seal such documents.

Personal Property: Any property that is not “real property” (real property includes land, and, most times, buildings)

Register of Wills: An elected official whose job it is to probate wills, process legal documents and maintain files.

Residue: The amount left in the estate after deduction of all expenses, taxes and specific bequests and devises.

Successor Guardian: Someone who becomes the guardian of the deceased person’s children if the guardian named cannot or will not serve.

Tenancy by the Entireties: Married people who own property together. When a spouse dies, the property automatically becomes by law the property of the surviving spouse, without being part of the probate estate.

Tenancy in Common: A form of ownership of property in which two or more parties share property ownership and any income from such property, but have no right to survivorship. This means that, if one dies, the survivor(s) does not automatically become owner of the decedent’s share of the property, rather the decedent’s interest in the property is part of his estate and passes according to his will.

Joint Tenants with the Right of Survivorship: A form of ownership of property in which two or more parties share ownership such that when one dies, the others automatically, by law, become the sole owners.

Testate: Having a will.

Testator (testatrix): A person who makes a will (whether the person is alive or dead).

Trust: A trust is a legal document. You transfer assets to the trustee who, in compliance with the trust, controls these assets for the benefit of the beneficiary. A trust may be created by a will (testamentary) or during lifetime (inter vivos).

Trustee: A person or trust company or other qualified entity appointed to administer a trust for someone's benefit (the beneficiary).

Unfunded Trust: A trust set up but no transfer of assets is currently made to the trust. Many times, when a will is probated, it provides that assets are transferred to the trust from the estate.

Will: A document that appoints an executor after your death generally to take care of paying your bills and final expenses, gathering and valuing your assets, paying death and final income taxes and designating the beneficiary of your assets.