

ALL ABOUT PROBATE

1. Q. *What is probate?*

A. Probate is the procedure of settling the estate of all deceased person. The estate of one who has died consists of the property of that person upon death.

2. Q. *Who is responsible for probate in my estate?*

A. If you have made a will, you have probably named a person, called the Executor, in that document. If you have no will, the court will appoint someone, usually the next-of-kin, to be the Administrator of your estate for this purpose.

3. Q. *What are the duties of my executor?*

A. The duties of the Executor are the same as those of the Administrator.

- a. Safeguard the estate's property;
- b. Inventory the property;
- c. Submit accounts and inventories to the court as required;
- d. Pay the debts and expenses of the deceased (including funeral and burial expenses, costs of last illness, and outstanding medical bills);
- e. Pay any federal or state death taxes; and
- f. Distribute the estate to those named in the will or, if no will exists, to the next- of-kin.

4. Q. *Who pays for all this?*

A. Your estate does. In general, your estate is responsible for all your debts, bills and expenses. These must be paid before any remaining assets in your estate can be given to your next-of-kin or your heirs under the will. Your Executor has no duty to pay these costs out of his or her own pocket and is not normally personally liable for your debts. Your Executor has the duty to release enough of your assets to allow the payment of expenses such as taxes, credit card balances and hospital bills.

5. Q. *If I am appointed as someone's executor, do I get paid?*

A. An Executor- (or an Administrator) can request the court to provide two type of compensation:

- a. Direct reimbursement for out-of-pocket expenses, such as postage stamps, bank charges and mileage; and
- b. Payment for services rendered as an Executor or Administrator (unless the will directs otherwise).

The amount of this latter payment will vary, of course, depending on the amount of work done, the time spent on the estate, the complexity of the work and the size of the estate.

6. Q. *Does my executor have to pay a fee or post a bond to settle my estate?*

A. There are various expenses necessary to settle an estate. Fees must be paid to the court upon filing and closing the estate. A bond is sometimes required, especially if there are minor children or an out-of-state Executor/Administrator involved. These costs are, of course, paid by the estate.

7. Q. *Are my creditors notified of my death?*

A. Your Executor/Administrator must place a legal notice in the newspaper for your creditors after the court has appointed him or her to handle your estate. The notice must:

- a. Give the name of the deceased and the name and address of the Executor or Administrator;
- b. Be published once a week for three weeks in a row in the locality where the deceased had his or her home; and
- c. State that all claims of creditors must be made within six months of publication of the notice.

Once this is done, the publisher prepares an Affidavit of Publication and this is put in the Court file. Any claims not presented to the Executor or Administrator within these six months need not be paid.

Those claims which are valid and which are presented within the six-month period, including debts and expenses known to the Executor or Administrator, must be paid out of the available funds in the estate.

8. Q. *What are the inventories and accounts I must file as an executor or administrator of someone's estate?*

A. Using North Carolina as an example, when you initially apply to the Clerk's Office for appointment, you will need to fill out an initial inventory. This is so you can give a preliminary account or a rough estimate of the assets in the estate. Within the first three month after you are appointed, you must file the Ninety-Day Inventory, which is the first formal accounting

of the assets in the estate of the deceased-- real estate, cars and trucks, furniture, pension benefits, bank accounts, jewelry and so on. If you have completely settled the estate within twelve months of qualifying as Executor or Administrator, you will then file the Final Inventory, listing the following:

- Amount of total assets as shown on the Ninety-Day Inventory you have already filed;
- Additional assets received by the estate since the filing of the Ninety-Day Inventory (with description and fair market value);
- Expenses, debts, taxes and bills paid by the estate; and
- Distribution of the estate to the heirs (how and to whom).

If you haven't completed settlement of the estate, you must file an Annual Inventory showing items a, b, and c, above. A simple estate can usually be closed in a period of 7-12 months.

9. Q. *Can I get into the safety deposit box of the deceased?*

- A. Yes - the law provides that you can have access to the safe deposit box of the person whose estate you are settling, so long as you are accompanied by someone from the Office of the Clerk of Superior Court on your first visit. At that time, the official (usually a deputy or assistant clerk) will supervise the opening of the box, inventory the contents and turn the contents which belong in the estate over to you for safekeeping. The inventory is returned to the Clerk's Office for filing.

10. Q. *How do I handle the money of the deceased?*

- A. You should immediately set up an "estate account" at a local bank as soon as you have been appointed Executor or Administrator. You can arrange this at any local bank, and there is a small charge for printing the checks showing your name, your title (Executor/Administrator), the name of the deceased and other information. Having a separate account is a good step toward preventing the mixing or "commingling" of your own personal funds and those that belong to the estate. With the estate account set up, you can deposit or transfer the funds of the deceased into this separate account. Some items, such as paychecks, insurance premium refunds or employee death benefits, may be deposited directly into the estate account. In the case of other assets, such as bank accounts, certificates of deposit, stocks and bonds, you will need to obtain a tax waiver from the North Carolina Department of Revenue (if the item is worth more than \$10,000) to be able to transfer the asset into the estate account. The tax waiver application form is available from the Clerk's Office, from any local office of the Department or from the statewide office in Raleigh.

11. Q. *Are life insurance proceeds part of the estate?*

A. For tax purposes, life insurance proceeds are counted as part of the taxable estate if the policy was owned by the deceased. You must account for the proceeds of such a policy on the tax return (state and ,if necessary, federal) of the estate. On the other hand, only life insurance proceeds payable to the estate are listed on the inventory filed with the Clerk. Those policies and proceeds made payable to individual beneficiaries pass by contract, outside of the estate, directly to the named beneficiary.

12. Q. *Once I have paid all the fees and expenses and accounted for all the property, how do I close the estate?*

A. First you would prepare the applicable state Inheritance and Estate Tax Return (if required) and, if a large estate is involved, a Federal Estate Tax Return for the estate as well. A state tax return must usually be prepared, but federal law does not tax estates valued at less than \$600,000. The North Carolina Department of Revenue will furnish you with a form, upon payment of any taxes due, which certifies that the estate is cleared for closing. The next step is to distribute the estate among the heirs-at-law (if there is no will) or the designated beneficiaries (if a will has been admitted to probate). You should obtain a receipt from all heirs or beneficiaries stating that they have received their entire share of the estate of the deceased (signed, dated and witnessed). After you have distributed or divided the property, submit those receipts along with the Final Inventory to the Clerk's Office. You will also need canceled checks or "paid receipts" for all expenses, fees and bills that have been paid. Once that Office is satisfied that you have accounted for all assets and expenses, the estate will be closed.