

Procedural Information Only
Estate Matters

This procedural information packet is provided to assist you with procedural filing requirements for the Clerk’s Office. The information provided pertains to procedural matters affecting this office only, so, you must consult with your attorney to discuss the full statutory procedures which you must perform as the Court-appointed Personal Representative. This guide should not be used for administering an estate in another county as their probate procedures may be different than those practiced in our Court.

The Clerk’s Office is prohibited from discussing legal issues; therefore, call your attorney with any legal questions, rather than the Clerk’s Office.

Since this information packet only contains general procedural requirements for the Clerk’s Office, you should always keep your attorney informed of situations which may arise during your tenure as Personal Representative.

Letters

Letters will be issued to the Personal Representative after the appointment hearing. These *Letters* are the instruments which evidence the Personal Representative’s authority to handle the affairs of the decedent’s estate.

If the decedent died **with** a Will, our office will issue *Letters Testamentary*.

If the decedent died **without** a Will, our office will issue *Letters of Administration*.

Until such time as *Letters* are issued, you have **no** authority to handle any of the decedent’s affairs. However, there are ***important things you can do at the beginning of this process:***

- Begin identifying assets which are solely in the name of the deceased or those assets you cannot access with a certified copy of the Death Certificate. These are the assets that will eventually become the “*probate*” assets. If the total value of these assets is **\$50,000 or less**, you may consider filing a **Small Estate Affidavit** (form packet located on Probate Clerk’s website).
- Determine if the decedent has any interest in real property – which may complicate the process.
- Determine if the deceased was fifty-five (55) years of age or older and was receiving TennCare benefits while confined to a nursing facility – which may further complicate the process of selling any real property. You will want to seek the advice of an attorney in this situation.

Personal Representative Appointment

After the proper pleadings are filed with the Clerk’s Office and all interested parties have been notified, a hearing will be conducted by the Court to formally appoint you as the Personal Representative for the estate and allow you to **open the estate**.

Personal Representative Oath
(form located on Probate Clerk’s website)

Once the hearing is concluded, you **must** appear in the Clerk’s Office and sign your Personal Representative Oath stating that you will properly perform your duties as Personal Representative to the best of your ability.

Letters (provided by Clerk's Office)

Once you have been formally appointed as Personal Representative, signed the Oath, and posted a Surety Bond (if required), the Clerk's Office will issue you either *Letters Testamentary* or *Letters of Administration*.

Bond and Fees

You and your attorney **must** execute a Cost Bond (form located on Probate Clerk's website) in order to obtain *Letters* during administration of the estate. Initial filing fees **must** be paid at the time of filing. Any accrued Court costs are expected to be paid annually – if the estate remains open after one (1) year – and at the time the estate is closed. If you will be publishing notice for creditors, please bring a separate check which will be made payable directly to the newspaper/publication.

If the Court has ordered a Surety Bond, you should sign the Corporate Surety Bond form (also known as the Bond Book) when you come to the Clerk's Office and you **must** make arrangements to secure the Bond. Securing a Bond typically involves a check of your past credit history. If you have any concerns about the Bond, discuss those with your attorney.

Duties and Filings Required Once Estate is Opened

Once the estate is opened, you will be charged and responsible for performing certain duties. There are several filings that you will be required to file with the Probate Clerk's Office within a certain timeframe. Your **e-mail address** should have been provided with the filing of the Petition. If so, our office will send you an e-mail reminder with a list of the forms required thirty (30) days before your Probate filing is due. If your e-mail address was not provided to the Clerk's Office, please submit it to our office so you will receive these helpful reminder e-mails.

Timeframes for Filing

- **Affidavit of Notice to Heirs** – within 60 days from appointment.
- **TennCare Affidavit** – within 60 days from appointment.

Timeframes for Filing When Ordered by the Court

- **Inventory** – within 60 days from appointment.
- **Interim Accounting** – within 30 days after the 15 month date of your appointment.
- **Annual Accounting** – within 30 days after the 12 month date of filing your Interim Accounting.
- **Annual Status Report** – within 15 months from Appointment and thereafter, 12 months after filing the previous Annual Status Report. (Annual Status Reports are still required if Accountings are waived.)

Bank Account(s)

You may need to establish an estate bank account(s) with a financial institution which will require you to apply for an Estate Taxpayer Identification Number (EIN). This application can be obtained from the Internal Revenue Service's website at IRS.gov. You may also be required to file Annual Accountings with the Court (discussed in more detail below) so be sure and inform the banking institution that detailed financial statements **must** be available to you, either online or by mail.

Affidavit of Notice to Heirs
(form located on Probate Clerk's website)

Pursuant to T.C.A. §30-2-301(b), you **must** execute and file with the Clerk's Office an *Affidavit of Notice to Heirs*, **within sixty (60) days of your appointment**. Be sure to include on the Affidavit form the names of **all** the beneficiaries under the Will, or the heirs-at-law, even if additional pages are required.

TennCare Affidavit
(form located on Probate Clerk's website)

Pursuant to T.C.A. §30-2-301(b)(5), you **must** provide notice by *Affidavit* to the Clerk that the Bureau of TennCare has been notified of the decedent's death.

Inventory with Certificate of Service
(forms located on Probate Clerk's website)

Unless specifically waived by the Will or unless all the residuary distributees/legatees agree to waive the filing of the Inventory by written statement to the Court, you must file an Inventory of the estate's assets **within 60 days of your appointment as Personal Representative**, pursuant to T.C.A. §30-2-301(a). The Inventory must be timely filed with the Probate Clerk's Office and a copy must be mailed to all interested parties of the decedent's estate with a Certificate of Service. If the Inventory is not timely filed, the law requires the Clerk to issue you a Notice of delinquency in filing the Inventory and thereafter, you may be summoned to Court to answer why the required Inventory has not been filed.

Even though the filing of the Inventory may be waived, you should still prepare and maintain an accurate Inventory in the event one is ever requested. An Inventory will also be required to determine estate tax liability. Consult your attorney for information regarding the Inventory.

Notice to Creditors

The Clerk's Office will mail you and your attorney a copy of the *Notice to Creditors* within four (4) weeks of your appointment. Pursuant to T.C.A. §30-2-306(d), a copy of the *Notice* **must** be mailed or delivered to all known (actual) creditors or any creditors who are reasonably ascertainable in order to avoid any legal issues that might otherwise develop.

Inheritance Tax Return

Your attorney or accountant may be required to file an Inheritance Tax Return with the Tennessee Department of Revenue on behalf of the estate. Pursuant to T.C.A. §67-8-420(a), you may be required to file a copy of the Tax Receipt or Certificate with the Clerk indicating that all inheritance taxes have been paid or that no inheritance taxes are due. The "*Short Form*" *Inheritance Tax Return (INH-302)* is available on the State of Tennessee's website at TN.gov. The mailing address for filing the Return can be found at the top of the form and the Receipt will be returned to you by mail. The Clerk's Office is **not** authorized to answer any questions relating to these forms. If certain statutory requirements are met, the Personal Representative of the estate may file an Inheritance Tax Affidavit with the Clerk's Office in lieu of obtaining a Release from the Tennessee Department of Revenue, pursuant to T.C.A. §67-8-409(g).

Accountings
(form packets located on Probate Clerk's website)

If the estate remains open over fifteen (15) months, unless specifically waived by Court Order, an Interim Accounting and thereafter Annual Accountings shall be due during your tenure as Personal Representative. There are several forms and documents which must be filed for the Interim and Annual Accountings. It is important that you are aware **we are not allowed to accept Accountings by fax and Incomplete Accountings will not be accepted.** Therefore, you should access the Accounting Checklist which includes specific instructions and a list of all forms located on the Probate Clerk's website at <http://circuitclerk.nashville.gov/probate/probateforms.asp> under the *Forms* tab and *Accounting Forms Packets* to ensure all required forms and documentation are included.

Interim Accounting

Your first Accounting (Interim Accounting) must be filed with the Clerk ***within thirty (30) days after the fifteen (15) month date of your appointment*** by the Court.

Annual Accounting

Your Annual Accounting must be filed with the Clerk ***within thirty (30) days after the twelve (12) month date of your Interim Accounting.***

Estate Status Reports
(form located on Probate Clerk's website)

Pursuant to a specific Order entered by this Court regarding case management, an **Estate Status Report** (form located on Probate Clerk's website) **must** be filed annually with the Clerk's Office until such time as the estate is closed. This Report is **never** waived and is due whenever an Accounting becomes due for filing – even if Annual Accountings may be waived. Please note that if an Accounting is due to be filed with the Clerk's Office, the mere filing of a Status Report is **not** sufficient to eliminate the Accounting requirement; therefore, all Accounting documentation and the Status Report will be due.

If the Court has waived the requirement for filing Accountings by Court Order, you will be required to file an Annual Status Report ***within thirty (30) days after the twelve (15) month date of your Appointment and thereafter, within thirty (30) days after the twelve (12) month date of filing your previous Annual Status Report.***

Closing the Estate
(form packet located on Probate Clerk's website)

There are two (2) methods to choose from in closing out an estate in Davidson County Probate Court. The estate may be closed by filing either a *Detailed Final Accounting* before the Clerk or by filing *Statements in Lieu of a Detailed Final Accounting*.

Statements in Lieu vs. Detailed Final Accounting

If the administration of the estate is properly administered and none of the beneficiaries are minors or incompetents, all portions of the estate have been distributed, and **ALL** beneficiaries acknowledge that the estate has been properly distributed to them, then you may use the "*Statement in Lieu*" method. However, **if even one residual beneficiary does not agree** to sign a *Statement* or you anticipate any problems, it will be necessary to file a "*Detailed Final Accounting*" with the Clerk.

It is very important that you specifically follow one of the two methods. Each method is very different and should be strictly followed as set forth by statute – **not** combined or confused. *For example, do not attempt to file a Receipt and Waiver of Appearance at the “Detailed Final Accounting” when you are closing with Statements in Lieu of a Detailed Accounting.* A Receipt and Waiver is not receipting and waiving an Accounting – it is receipting and waiving an appearance at a Detailed Accounting.

If minors or incompetents are residual beneficiaries in the estate, you are required to file a *Detailed Final Accounting* with the Clerk. In this Court, any distribution to minors or incompetent persons requires specific Court approval. The Court may even require a legal guardianship (different from custodial guardianship) to be opened in the case of a minor and may require conservatorship proceedings in the case of an incompetent adult. **Do not** automatically assume you can make distributions to minors under the Uniform Gifts to Minors Act. Any distribution under this Act in our Court **requires** specific Court approval.

Statement in Lieu of a Detailed Final Accounting

The quickest and easiest way to close an estate – if **all** competent adult beneficiaries are in agreement – is for the Personal Representative and distributees to respectively file two (2) **separate** Statements regarding their rights and responsibilities and waiving the requirement of a *Detailed Final Accounting* before the Clerk. These two (2) separate Statements work together in combination and consist of a *Personal Representative Statement* and a *Distributee Statement* (forms provided on Probate Clerk’s website). An *Order to Close Without Detailed Accounting* (form provided on Probate Clerk’s website) is also required. **Please remember** – you **cannot** use this method if even **one** (1) heir or beneficiary refuses to sign a *Statement* or if **any** residual beneficiary is a minor or incompetent person.

NOTE: If any distributee of the estate is a Trust, you should contact your attorney before filing a *Statement in Lieu of Detailed Accounting* to be signed by a Trustee as there are possible future legal implications to be discussed.

Detailed Final Settlement (see *Final Estate Accounting Instruction Sheet and Checklist*)

The Personal Representative must mail and file the document *Notice of Date to Submit Final Accounting*, (form packet located on Probate Clerk’s website) to all the interested parties within five (5) days of presenting the Accounting in the Clerk’s Office. On the date and time certain that the Personal Representative provided in the *Notice of Date to Submit Final Accounting*, the Personal Representative will present a Final Settlement to the Clerk which **must** include the following:

- **Detailed Final Accounting Cover Sheet** which **must** be sworn to and include:
 - Beginning Balance brought forward from the last accounting period;
 - Total Receipts of funds/assets during the accounting period;
 - Total Disbursements/expenditures during the accounting period; and
 - Ending balance.
- **Detailed Accounting Register(s).**
- **Financial Statements.**
- **Copy of Notice of Date to Submit Final Accounting.**
- **Certificate of Service.**
- **Corporate Surety Statement** (if Bond has not been waived) stating that Bond is still in effect.
- **TennCare Release.** Pursuant to T.C.A. §71-5-116(c)(2), the Personal Representative **must** submit a release from the *TennCare Bureau* (form provided on Probate Clerk’s website) evidencing payment of all medical assistance benefits, premiums, or other such costs due from the estate under law with respect to a decedent who was fifty-five (55) years of age or older at the

time of death, unless waived by the Bureau. The estate **cannot** be closed until this **TennCare Release** is submitted and filed with the other closing documents.

- **Tennessee Department of Revenue Release or Inheritance Tax Affidavit.**
- **Release(s) of all Claims and payment of all Court costs.**

We are not allowed to accept Accountings filed by fax and INCOMPLETE ACCOUNTINGS WILL NOT BE ACCEPTED!

This is, basically, an *Annual Accounting* which details the final or proposed estate disbursements. If you have previously filed an *Annual Accounting(s)*, the Final Settlement will begin with that ending balance and include any and all transactions incurred during this specific accounting period, as well as detail and/or propose final disbursements to the beneficiaries.

Any residuary beneficiaries in agreement with the *Final Accounting* may sign a *Receipt and Waiver of Appearance* (form provided on Probate Clerk's website) thereby waiving their personal appearance at the Final Settlement. Otherwise, a **Notice of Date to Submit Final Accounting** must be sent by *certified mail* to all interested parties.

A minimum of thirty (30) days is required for review of the *Detailed Final Accounting* once presented to the Clerk. This statutory exception period **may** be extended by the Court for sufficient cause. Please **do not** contact the Clerk's Office immediately upon expiration of the thirty (30) day period as Accountings are reviewed in the order received and delays may be experienced. Our Court does not require the filing of additional pleadings for approval of an *Accounting* – it will either be approved upon review or set for hearing due to various deficiencies.

REMINDERS

Regarding Your Personal Representative Duties

These basic reminders cover the general concept of your duties as Personal Representative. Any questions you may have about this information should be directed to your attorney and not the Clerk's Office.

- Keep in mind that you will ultimately account to the Court for your actions as *Personal Representative*.
- Never co-mingle your funds with the funds of the estate. **Always** keep receipts and make notes on the Accounting Register regarding any transactions that may not be easily recognized by the Court – such as checks payable to individuals for services performed on behalf of the estate. **Never** use a cashier's check to conduct estate business.
- If you are using an online banking printout as your Accounting Register, it **must** include transaction dates, check numbers, payees, transaction amounts, and the nature of each transaction. If your online banking system does not allow you to "*memo*" the nature of the transaction and it is not something easily recognized by the Court, you **must** "*handwrite*" it on the Register.
- Simply copying online bank statements **will not** serve as a replacement for your Accounting Register. However, most online banking services include various software formats that allow you to convert the online statement to an Accounting Register for

printing. Be sure to check and see if this option is available through your bank. Some banks will also waive any extra fees for providing the original statements if they are aware it's for the purpose of filing an *Accounting* with the Court.

- List all checks numerically in the Accounting Register, **including** any voided, missing or omitted checks – as missing and omitted checks will cause an *Accounting* to be disallowed.
- It usually takes thirty (30) to sixty (60) days for *Accountings* to be reviewed and approved for recording. However, an *Accounting* may be set for a review hearing if it contains certain deficiencies.
- The Clerk's Office **does not** have the authority or ability to extend the time for filing an *Inventory*, *Accounting* or *Annual Status Report*. If an extension is necessary, your attorney must file a Motion with the Court requesting such an extension.

Other Items of Interest

As to Forms: We do not include any forms with this procedural information packet since there are several methods you may choose from in administering and closing out the estate. An updated list of all available probate forms and packets may be found on the Probate Court Clerk's website at <http://circuitclerk.nashville.gov/probate>.

As to Claims: The Clerk will mail you and your attorney copies of any Claims filed against the estate. You should then consult with your attorney as to how you wish to proceed regarding the Claim as there are many legal issues to consider. When closing the estate, you **must** verify that all Claims have been paid, released, settled or adjudicated. A cancelled check for verification that a Claim has been paid can **only** be used if it is payable and endorsed for the **exact amount** of the Claim – and the **original** cancelled check must be provided to the Clerk. Otherwise, it will be necessary for you to contact the Claimant and request a Release of the Claim. If a Claim was settled or adjudicated, an Order must be entered regarding such Claim.

As to Specific Bequests: When specific bequests made in a Will are honored, you should ask the competent adult recipient of the bequest to acknowledge their receipt in writing and then file the receipt with the Clerk as a *Specific Bequest Receipt*. Cancelled checks as verification that a specific bequest has been paid and received are allowable **only** when the Clerk can verify the endorsement. ***Please try to obtain a Specific Bequest Receipt from the recipient.*** Never make any distributions – cash or otherwise – to minors or incompetent persons.

As to Court Costs: Accrued Court costs should be paid **annually** if the estate remains open longer than one (1) year. Court costs related to the *Notice of Publication to Creditors*, any *Notices* and/or *Citations* issued, and the issuance of any additional *Letters* will be added to your account. Court costs are subject to change without notice and are determined by statute – not by the Clerk. Court costs may continue to accrue at any time while the estate remains open and the **full amount** is expected to be paid when the estate is **closed**.

As to Statutory and Court-Ordered Deadlines: It is very **important** that you realize this office is charged and authorized by the Court to continually monitor its cases. Your failure to timely perform certain statutory duties may result in *Notices* and/or *Citations to Appear* being mailed or served on you and will result in additional cost and fees. The Court may also issue an *Order for Show Cause* requiring you to appear and explain your failure to perform certain duties. Your failure to properly account for the assets placed in your charge could result in the Court ordering a judgment against you for the value of those assets – making you **personally** responsible! The Court costs and legal fees for these actions may also be assessed against you.

As to Other Issues: There are **many** issues related to your duties as *Personal Representative* and to the administration of an estate which cannot be fully detailed in this Procedural guide. Even though the information we have provided in this guide may appear to be quite substantial, there are numerous other issues – both legal and non-legal – which are not discussed here.

As to Other Duties: Remember that **all** documents filed with our office should be photocopied and mailed or delivered to all interested parties of the estate, including creditors. All correspondence with our office should be **written** and **must** include the docket/case number. You are **required** to notify this office of any and all address changes. Our contact information is as follows:

**Probate Court Clerk
Room 303, Historic Courthouse
One Public Square
Nashville, TN 37201
(615) 862-5980**

<http://circuitclerk.nashville.gov/probate>