



# Estate Administration Checklists

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## **ESTATE ADMINISTRATION CHECKLISTS**

### **A. PRELIMINARY INFORMATION REQUIRED TO ADMINISTER THE ESTATE**

1. Jurisdiction
2. Venue
3. Requirement of Attorney: Uniform Chancery Court Rule 6.08
4. Fiduciary/Attorney Diligence Requirement: Uniform Chancery Court Rule 6.02

### **B. QUALIFICATIONS OF ADMINISTRATOR/EXECUTOR**

1. Legal - 18 years of age, not of unsound mind, and not convicted of any felony
2. Practical - experienced in asset management, estate administration and with a convenient location or residence

### **C. PRIMA FACIE CASE: ADMISSION OF WILL TO PROBATE**

1. Court can compel production of original Will  
Criminal Statute for destroying or withholding original Will
2. Testimony of competent witnesses: Rules Evidence
3. Witnesses summoned to testify
4. Attested Will- Proof of due execution, testamentary capacity and testimony of at least one competent witness  
Proof by Affidavit acceptable if no contest
5. Holographic Will- Proof of testamentary capacity by witness with personal knowledge of testator mental condition at or near the time of execution  
Proof of due execution by Affidavits of two witnesses familiar with decedent's handwriting if no contest: Rules Evidence
6. Probate as Prima Facie Case
7. Caveat or objection to Will

**D. COMMON FORM PROBATE TESTATE ESTATE (No Notice to Interested Parties)**

1. Bond and inventory waived by Will; Judge discretion
2. Affidavit of Subscribing Witnesses - Will must be proved by one subscribing witness
  - (a) Self-proving Affidavit of subscribing witness: MCA §91-7-7
  - (b) If no subscribing witness can be produced to prove the execution of the Will, it may be established by proving the handwriting of the testator and of a subscribing witness
  - (c) When no contest, Affidavit of subscribing witness receivable as substitute for personal attendance: MCA §91-7-9
  - (d) Testimony of absent witness: MCA §91-7-11
  - (e) Use of Waiver and Joinder to convert to Solemn Form Probate
3. Parties bound
4. Person probating Will; Interested party

**E. SOLEMN FORM PROBATE TESTATE ESTATE (Notice to Interested Parties)**

1. All interested persons may be made parties
2. Caveat against probate may be filed before probate
3. Probate of Will is prima facie evidence of validity
4. Procedure for jury trial by Chancery Court
5. Trial of issue Devisavit Vel Non
6. Parties bound

**F. TESTATE ADMINISTRATION GENERALLY**

1. Executor
  - (a) Qualifications

- (i) Not under age 18
    - (ii) Not of unsound mind
    - (iii) Not convict of felony
  - (b) Designated by Will
  - (c) Time limit to accept or reject
  - (d) Administrator with Will annexed
2. Fiduciary
- (a) Certificate of Fiduciary (See local Chancery Court Rules)
  - (b) Certificate of Attorney (See local Chancery Court Rules)
3. Oath and Bond
- (a) Oath
  - (b) Bond
  - (c) Waiver of Bond
  - (d) Bond Equal to value probate estate
4. Executor Duty
- (a) Specified in Will
  - (b) Act in good faith and employ such vigilance, sagacity, diligence and prudence as a person of discretion and intelligence would employ in the management of his or her own affairs
  - (c) Default use of intestate provisions
5. Inventory and Appraisement
6. Decedent's Debts
- Testator may direct how debts paid

**G. PROCEDURES FOR TESTATE ESTATE ADMINISTRATION**

- 1. Petition to open estate and appoint executor with original Will
  - Original Will filed in Probate Court
  - Probate of lost or facsimile Will
- 2. Notice

- (a) No notice Common Form Probate
  - (b) Waiver and Joinder Common Form Probate or Solemn Form Probate
  - (c) Service of Process Solemn Form Probate
3. Order to admit Will to probate and appoint executor
4. Oath of Executor
5. Bond (if not waived)
6. Letters Testamentary
7. Inventory (if not waived)
8. Appraisement (if not waived)
9. Notice to Creditors
  - (a) Actual notice to known creditors (Letter, Certified Mail-Return Receipt)
  - (b) Affidavit known Creditors (Attach actual notice letters as Exhibits)
  - (c) Notice by publication (3 consecutive weeks, newspaper of general circulation)
  - (d) Proof of publication (Artificial Statue of Limitations)
10. Claims of Creditors
  - (a) Examine claims
  - (b) Admit or contest claims
  - (c) Release of claims
11. Accounting
  - (a) Annual
  - (b) Final
  - (c) Preparation of Accounting: Uniform Chancery Court Rules 6.03, 6.05
12. Petition to close estate, distribute assets and discharge executor
13. Order to close estate, distribute assets and discharge executor
14. Distribution of assets and receipts

15. Statement of compliance

## **H. CONTEST OF WILL**

1. Purpose of Contest- Determine if subject writing is valid Will of decedent
2. Parties with standing to contest- Anyone desiring to contest
3. Institute Will contest-
  - (a) Probate in Solemn Form
  - (b) Caveat
  - (c) Contest within 2 years of Common Form Probate
4. Pleadings- contest validity of Will and request issue be tried to jury
5. Parties to Contest- All interested persons
6. Will contest trial by jury if requested
7. Will Contest Procedure- Proponent burden of proof
8. Will Contest Prima Facie Case
9. Will Contest Grounds
  - (a) Testamentary Capacity
  - (b) Attested Will not duly executed
  - (c) Undue Influence:
    - (i) Traditional Doctrine- Will of testator so dominated and controlled that Will was that of another person.
    - (ii) Circumstantial Evidence
      - (1) Reasonableness of Will
      - (2) Mental capacity
      - (3) Activity in making Will
      - (4) Relationship between testator and undue influencer
    - (iii) Confidential Relationship Doctrine: Confidential relationship between testator and beneficiary (Fiduciary relationship) Beneficiary activity in preparation or execution of Will or “suspicious circumstances”

If spouse “undue methods”

- (iv) Fraud
  - (1) Contents of the Will (Fraud in the execution)
  - (2) Effect of disposition in Will (Fraud in the inducement)
  - (3) Elements to establish fraud:
    - Misrepresentation
    - Scierter
    - Reliance

10. Rules of Evidence

- (a) Rules of Evidence
- (b) Special Rules of Evidence
  - (i) Deadman Statute
  - (ii) Declaration of Testator
    - (1) Condition of Mind
      - Testamentary Capacity
      - Undue Influence
    - (2) Truth of matter asserted
      - Present sense impression
      - Excited Utterances
      - Statement of existing condition
      - Memory or belief execution, revocation, identification, terms

**I. INTESTATE ADMINISTRATION GENERALLY**

1. Administrator

- (a) Spouse legal right to appointment
- (b) After spouse relatives entitled to inherit
- (c) MS Trust Company, National Bank or Creditor can be appointed

2. Fiduciary
  - (a) Certificate of Fiduciary (See local Chancery Court Rules)
  - (b) Certificate of Attorney (See local Chancery Court Rules)
3. Administrator Qualification
  - (a) Same qualifications as Executor
4. Oath and Bond
  - (a) Oath
  - (b) Bond
  - (c) Waiver or reduction of bond
  - (d) Additional bond
5. Administrator Duty
  - (a) Officer of the court with fiduciary relationship to all parties having an interest in the estate.
  - (b) Trustee for creditors and heirs.
  - (c) Reasonable prudent, intelligent administrator test.
6. Inventory and Appraisal
  - (a) If appraisers appointed- inventory and appraise assets within 30 days  
Administrator inventory money and debts  
Administrator charged with appraiser inventory
  - (b) If appraisers not appointed- administrator provides inventory of assets, debts and values within 90 days  
Court may compel information and possession of assets  
Additional inventory
7. Creditor Claims
  - (a) Diligent efforts to identify those having claims against estate and actual notice by mail
  - (b) Affidavit of notice to creditors
  - (c) Publication of notice to creditors

- (d) Proof of Publication
- (e) Payment of claims
- 8. Accounting
  - (a) Annual Accounting
    - (i) Attorney duty to ensure accounting: Chancery Court Rules 6.02
    - (ii) Duty of Chancery Clerk if no accounting
  - (b) Waiver of Accounting- Primary authority case law
  - (c) Form of Accounting
    - (i) Itemized disbursements with amount of each disbursement and receipt or check
    - (ii) Receipts of money and sources

**J. PROCEDURES FOR INTESTATE ESTATE ADMINISTRATION**

- 1. Petition to open estate and appoint administrator
- 2. Notice
  - (a) Waiver and Joinder
  - (b) Service of Process
- 3. Order to appoint administrator
- 4. Oath of administrator
- 5. Bond
  - (a) Court may reduce bond
  - (b) Court may waive bond
  - (c) Sole heir or all heirs competent and present sources petition
- 6. Determining heirship
  - (a) Petition naming heirs-at-law
  - (b) Actual summons and summons by publication
- 7. Letters of Administration
- 8. Appraisement

9. Notice to Creditors
  - (a) Actual notice to known creditors
  - (b) Notice by publication (3 consecutive weeks, newspaper general circulation)
10. Claims of Creditors
  - (a) Examine claims
  - (b) Admit or contest claims
  - (c) Release of claims
11. Accounting
  - (a) Annual
  - (b) Final
12. Petition to close estate, distribute assets and discharge administrator
13. Order to close estate, distribute assets and discharge administrator
14. Distribution of assets and receipts
15. Statement of compliance

**K. SPECIAL PROBATE**

1. Holographic Wills
  - (a) If wholly written and subscribed by testator, no witnesses required
  - (b) Two affidavits required to authenticate holographic Will or Codicil
2. Foreign Wills (affecting property in the state)
  - (a) Original may be proven and admitted to record
  - (b) May be admitted by use of authenticated copies
3. Nuncupative (Oral) Wills (at time of last illness)
  - (a) If more than a certain dollar amount \$100, must be two witnesses
  - (b) Next of kin to be summoned
  - (c) Six-month statute of limitations unless reduced to writing
  - (d) Not applicable for real property
4. Muniment of Title

- (a) By petition signed and sworn to by all beneficiaries named in Will and the spouse of the decedent, provided it be shown:
  - (i) Decedent's personalty does not exceed a certain dollar amount, exclusive of exempt property; and
  - (ii) All known debts of decedent and estate have been paid, including estate and income taxes
- (b) Does not preclude formal administration, contest of Will or rights of creditors

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