

Probate: Pennsylvania

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A Q&A guide to the laws of probate in Pennsylvania. This Q&A addresses state laws and customs that impact the process of an estate proceeding, including the key statutes and rules related to estate proceedings, the different types of estate proceedings available in Pennsylvania, and the processes for opening an estate, appointing an estate fiduciary, administering the estate, handling creditor claims, and closing the estate.

KEY STATUTES AND RULES

1. What are the state laws and rules that govern estate proceedings?

The following state laws and rules govern estate proceedings in Pennsylvania:

- The Pennsylvania Probate Estates and Fiduciaries Code (PEF Code) sets out the laws governing descent and distribution, probate, and estate administration (20 Pa. C.S. §§ 101 to 8815).
- The Inheritance and Estate Tax Act sets out the laws governing the Pennsylvania inheritance tax (72 P.S. §§ 9101 to 9196).
- The Supreme Court Orphans' Court Rules govern practice and proceedings with the orphans' court and register of wills (Pa. O.C. Rules 1.1 to 16.13).

Counsel should also consult local rules, since each county may adopt local rules regulating practice and procedure (see, for example, Philadelphia County Orphans' Court Rules.)

2. What court has jurisdiction over estate proceedings in your state?

In Pennsylvania, the register of wills in each county acts as a quasi-judicial body with original jurisdiction over the probate of wills and the grant of letters to a personal representative (20 Pa. C.S. §§ 711 and 901). Allegheny County, however, does not have a register of wills. The Pennsylvania Department of Court Records Wills/Orphans' Court Division instead serves as its functional equivalent in Allegheny County.

The Orphans' Court Division of the Court of Common Pleas has jurisdiction over estate proceedings, including appeals from the orders of the register of wills (or Department of Court Records, in Allegheny County) (20 Pa. C.S. § 711).

TYPES OF ESTATE PROCEEDINGS

3. What are the different types of probate or other estate proceedings or processes for transferring a decedent's assets at death?

Pennsylvania law provides four types of estate administrations:

- **Grant of letters.** This is a full administration proceeding when a decedent dies with or without a will and is for:
 - admitting the will to probate (if applicable);
 - filing bond (if required);
 - appointing a personal representative to administer a decedent's estate; and
 - court oversight of the estate administration process. (20 Pa. C.S. §§ 2101 to 2110, 3131 to 3175, and 3301 to 3332.)
- **Grant of letters is the most common estate proceeding.** If the decedent dies without a will, the proceeding is referred to as grant of letters of administration. If the decedent dies with a will, the proceeding is referred to as grant of letters testamentary.
- **Settlement of small estate on petition.** This is an abbreviated proceeding that may be used for certain estates with a gross value not exceeding \$50,000 (20 Pa. C.S. § 3102). This proceeding can be used whether or not the decedent died with a will.
- **Ancillary probate or administration.** This is a proceeding used to administer Pennsylvania property owned by a non-domiciliary or

to maintain a cause of action by a non-domiciliary in Pennsylvania courts (20 Pa. C.S. §§ 3136 and 4101 to 4121 and see Ancillary Proceedings). While ancillary probate requires a decedent to have a will, ancillary administration does not require decedent to die with a will.

- **Temporary fiduciary administration.** This is used to appoint a temporary personal representative when the previously appointed personal representative is in military service, has a conflict of interest, or any other situation where the appointed personal representative's functioning may not be in the best interests of the estate (20 Pa. C.S. §§ 4301 to 4306 and see Temporary Fiduciary Administration). Temporary fiduciary administration can occur whether or not the decedent died with a will.

Regardless of whether any of the above estate proceedings is instituted, in limited circumstances, Pennsylvania allows for payments to be made by employers, financial institutions, insurance companies, and the state treasurer directly to certain family members, and for payments from a patient's care fund to be made to a licensed funeral director (see Payments to Family and Funeral Directors) (20 Pa. C.S. § 3101).

The rules and procedures for testate and intestate estates are generally the same, unless otherwise noted.

OPENING THE ESTATE

4. What is the typical initial filing process for opening an estate? Specifically, please discuss:

- How original wills are handled.
- Whether filing typically occurs by mail, e-filing, or in person and common practices for the most common methods.
- Documents typically submitted to the court with the initial filing.
- Any additional practical advice regarding the initial process for opening an estate.

METHOD OF FILING

In Pennsylvania, the petitioner files the petition for grant of letters and supporting documents with the register of wills (see Documents Submitted with Initial Filing). Some counties permit or require (for example, Philadelphia County) counsel to e-file the initial petition (Pa. O.C. Rule 4.7). Counsel should check the local rules in the relevant county.

The personal representative must appear before the register or the register's deputy. If the decedent died with a will, the petitioner must bring the original will (see Appointing a Fiduciary Where Decedent Died with a Will). Scheduled appointments are not required.

After reviewing the probate documents and any original will, the register verifies that no caveat preventing appointment or probate has been filed (see Standing to Object). If there is a will, the register admits the original will to be kept with the permanent records of the register of wills. The register then administers an oath to the personal representative to faithfully administer the estate (20 Pa. C.S. § 3154).

If the executor is out of the county in which the proceeding must be commenced, the register has discretion to authorize an oath by commission by a register in a different county or its functional

equivalent in a different state. Counsel should contact both the register of the county in which the estate is being opened and the county in which the oath is to be administered to determine their procedures for oath by commission. If available, it is often more convenient for the personal representative to pay the commission fee than to travel to a register in another county. (20 Pa. C.S. § 3154(a).)

The register then furnishes the grant of letters, also known as the long certificate, which sets out a detailed version of the personal representative's appointment and attaches a copy of any probated will. Third parties rarely require the personal representative to present a long certificate. The personal representative instead typically presents a short certificate as it is widely accepted. These short certificates confirm the personal representative's authority, but do not have a copy of the will (if there is one) attached.

DOCUMENTS SUBMITTED WITH INITIAL FILING

The personal representative (or counsel for the personal representative) needs to submit the following to begin an estate administration:

- **Petition for grant of letters.** (See PA Courts: Petition for Grant of Letters and Information Contained in Petition.)
- **Estate information sheet.** Many, but not all, counties require an estate information sheet (see PA Courts: Estate Information Sheet).
- **Filing fees.** These fees vary by county, as does the time in the administration when each fee is charged. Verifying filing fees and accepted forms of payment in advance is a good practice.
- **Bond.** If there is an intestacy or if bond is not waived, the personal representative must post bond using a surety (20 Pa. C.S. § 3171 and see Question 8). The surety must appear in person at the register's office to sign the bond book before or at the same time as the appointment of the personal representative. Therefore, bond arrangements should be coordinated in advance.
- **Original will and codicils.** If the decedent died with a will, the register permanently retains the original will and any codicils.
- **Death certificate.** An original death certificate is required. A death certificate may occasionally be issued with incorrect information. In these situations, a corrected death certificate needs to be obtained before probate. This is done by submitting a correction request form to the Pennsylvania Department of Health, Division of Vital Records (see Death Correction Statement).
- **Renunciations.** Original renunciations of the right to serve as personal representative should be included with the initial probate documents if the decedent died with a will and the nominated personal representative declines to serve or if the person entitled to preference in appointment in an intestate estate declines to serve (see PA Courts: Renunciation and Question 5).
- **Witness affidavits.** Unlike many states, Pennsylvania does not require any subscribing witnesses to probate even if the will is not holographic (20 Pa. C.S. § 3132). However, if there is no self-proving affidavit, the will must be proved by the oath of two competent witnesses (20 Pa. C.S. §§ 3132 and 3132.1). (See PA Courts: Oath of Subscribing Witness(es), Oath of Non-Subscribing Witness(es), Oath of Witness(es) to Will Executed By Mark.)

UNAVAILABILITY OF WILLS

If the decedent died with a will and the original will is unavailable, a photocopy of the will may be probated by filing a petition for citation to show cause why a photocopy of the will should not be admitted to probate (see Philadelphia Estate Practitioner's Handbook: Petition for Citation to Show Cause). Unlike an original will, probating a photocopy of a will requires the proof of two witnesses regarding the proper execution of the will and clear and convincing evidence that the content of the unavailable original will is substantially as set out in the copy being probated (20 Pa. C.S. § 3132 and see *In re Estate of Wilner*, 142 A.3d 796 (Pa. 2016)).

COURT FORMS

If a Supreme Court approved form exists, no other form may be allowed or required by local rule (Pa. O.C. Rule 1.8 and see PA Courts: Orphans' Court Forms). If there is no Supreme Court form available for a particular process, counsel should check both local the local rules and with the local register of wills or orphans' court to see if a form is prescribed or available.

CONTACTING THE COURT

Confirming local practice, procedure, and filing fees with the register of wills office or the orphans' court staff is useful, especially when resolving unusual administration issues or working in an unfamiliar county.

5. Who can petition to open an estate and what information is required for the petition?

INFORMATION CONTAINED IN PETITION

The petition for grant of letters should contain the following statements made under oath:

- The decedent's name, age, state or country of domicile, last residence, and the place and date of death.
- If the decedent died:
 - without a will, the name and address of the surviving spouse and the names, relationships and addresses of the other heirs; or
 - with a will, whether the will was modified by circumstances occurring after the date of the will (that is, divorce, pending divorce, marriage, birth, adoption, or slaying) (20 Pa. C.S. § 2507).
- If the decedent was domiciled in Pennsylvania, the estimated value of the decedent's personal property and the estimated value and location of the decedent's real property situated in Pennsylvania.
- If the decedent was not domiciled in Pennsylvania, the estimated value of the decedent's personal property in Pennsylvania and the decedent's domiciliary state, and the estimated value and location of any real property in Pennsylvania;
- The name and address of each person requesting letters.
- Any other facts necessary to entitle the petitioner to letters.

(20 Pa. C.S. § 3153 and see PA Courts: Petition for Grant of Letters.)

PERSONS ENTITLED TO GRANT OF LETTERS

For a testate administration where a named executor can serve, the register grants letters testamentary to the executor designated in the will. For an intestate administration or if a named executor cannot serve, the register grants letters of administration in the following order of priority:

- To those entitled to the residuary estate under the will.
- To the surviving spouse.
- To those entitled under intestate law to receive the estate assets as the register determines best administers the estate, giving preference to the sizes of the share.
- To the decedent's principal creditors.
- To other fit persons.
- To the nominee of the person renouncing the right to letters of administration.
- To the guardianship support agency serving as guardian of an incapacitated individual that dies during the guardianship.
- To a redevelopment authority formed under the Urban Redevelopment Law.

(20 Pa. C.S. § 3155(a).)

STANDING TO PETITION TO BE APPOINTED FIDUCIARY

The residuary beneficiaries of a will where the nominated executor cannot serve, the surviving spouse, and the intestate heirs have exclusive standing for the first 30 days following death to petition to be appointed as personal representative. After that time, third parties with standing may apply to administer the estate without the consent of the persons with higher priority. (20 Pa. C.S. § 3155(c).)

Regardless of priority, some persons (whether or not named in the will as executor) are not qualified to administer an estate (see Qualification as Personal Representative).

The register has discretion to refuse to grant letters of administration to any nonresident (20 Pa. C.S. § 3157).

STATUTES OF LIMITATION

The probate of a will is conclusive regarding all property distributed unless the probate order is appealed or amended (20 Pa. C.S. §§ 3133 and 3138). A later will may, however, always be offered for probate.

The register may amend a probate order if a later will is submitted for probate within three months of the testator's death. The amendment is retroactively effective to the date of the initial probate. (20 Pa. C.S. § 3138.)

Appeals of the probate of a will must be made to the orphans' court no later than one year following the decree of probate. However, a party in interest may petition the court to have the appeal period shortened to three months. (20 Pa. C.S. § 908(a).)

After 21 years following the decedent's death, application must be made directly to the orphans' court to obtain a grant of letters, which is granted only on cause shown (20 Pa. C.S. § 3152).

PETITION FOR ADMINISTRATION

6. Who does the petitioner have to provide notice to during the estate opening process? Specifically, please discuss:

- Who is entitled to receive notice?
- What notice is required when an estate is open?
- Who has standing to object to the petition for probate or administration?

WHO IS ENTITLED TO RECEIVE NOTICE

If the decedent died intestate, the personal representative or the personal representative’s counsel must give notice within three months of appointment to each person entitled to inherit under the laws of descent and distribution (20 Pa C.S. §§ 2101 to 2108 and Pa O.C. Rule 10.5).

If the decedent died testate, the personal representative or the personal representative’s counsel must give notice to:

- Each beneficiary named in the will.
- The decedent’s spouse and children, regardless of whether they are named in the will.
- The trustee of any trust beneficiaries.
- The attorney general for any charitable beneficiary the interest of which exceeds \$25,000 or if the charitable beneficiary is not to be paid in full (Pa. O.C. Rule 4.4, and see PA Courts: Notice of Charitable Gift).
- If the decedent has received Medicaid or similar governmental health benefits, the personal representative must give notice to the Department of Revenue (see Question 9).

(Pa. O.C. Rule 10.5.)

The personal representative or the personal representative’s counsel must give notice for a minor heir or beneficiary to the minor’s appointed guardian or parent (Pa. O.C. Rule 10.5(4)).

The personal representative or the personal representative’s counsel must file a certification of notice with the register within ten days of giving notice. This filing may be made electronically in counties providing that service. (Pa. O.C. Rule 10.5 and see PA Courts: Certification of Notice Form RW-08.)

NOTICE OF ADMINISTRATION

In addition to giving notice to certain specified individuals, the personal representative must advertise the grant of letters in one newspaper of general circulation near the decedent’s residence (or for a nonresident, near the place where letters were granted), and in the legal newspaper designated by local rule for the publication of notice. This public notice must be published once a week for three consecutive weeks. (20 Pa. C.S. § 3162(a).)

STANDING TO OBJECT

Any person interested in the administration of the estate generally has standing to object to the appointment of a personal representative. If there is concern that an applicant filing for appointment is unfit, a caveat should be filed without delay (20 Pa. C.S. § 906). A caveat requires the register of wills to notify the caveator before probating a will or issuing letters. This is generally

the first step in starting a will contest. For an example of a caveat form, see Butler County Register of Will: Informal Caveat.

The register also may revoke a personal representative’s appointment if it appears that the applicant is not entitled to a grant of letters (20 Pa. C.S. § 3181).

Outside of these limited circumstances, the remedy for an objection to the appointment of a personal representative is filing a petition for citation to show cause why the personal representative should not be removed with the orphans’ court (20 Pa. C.S. §§ 3181 to 3182). The orphans’ court has exclusive power to remove a personal representative that:

- Wastes or mismanages the estate, is likely to become insolvent, or has failed to perform any duty imposed by law.
 - Has become incapacitated to discharge the duties of the office.
 - Has moved from Pennsylvania without furnishing security or additional security as the court has ordered.
 - Has been charged with voluntary manslaughter or homicide (except for homicide by a vehicle).
 - Jeopardizes the interests of the estate.
- (20 Pa. C.S. § 3182.)

For information on notice requirements for summary administration, disposition of personal property without administration, and ancillary administration, see Miscellaneous Estate Proceedings and Processes.

APPOINTING AN ESTATE FIDUCIARY

7. How is the person in charge of the estate (referred to here as the fiduciary) appointed? In particular please consider:

- The procedure for appointing a fiduciary when the decedent died with a will.
- The procedure for appointing a fiduciary when the decedent died without a will.
- The procedure for appointing a fiduciary in urgent or unusual circumstances.
- Any restrictions on a person’s eligibility to act as fiduciary, including whether an attorney preparing a will for a client can act as the fiduciary.

The personal representative responsible for administering a decedent’s estate is known as a personal representative. If the personal representative is named in the will, the personal representative is also known as the executor. If the personal representative is not named in the will, the personal representative is also known as the administrator.

APPOINTING A FIDUCIARY WHERE DECEDENT DIED WITH A WILL

If the decedent died testate, the executor named in the will should complete the official petition for grant of letters and appear in person before the register of wills with the original will.

If the decedent died testate but the named executor and any successors cannot or are unwilling to serve, letters of administration are granted in the order of priority prescribed by statute (20 Pa. C.S. § 3155(a) and see Persons Entitled to Grant of Letters).

The persons entitled to letters should complete the official petition for grant of letters and appear in person before the register of wills with the original will (see Opening the Estate).

APPOINTING A FIDUCIARY WHERE DECEDENT DIED WITHOUT A WILL

If the decedent died intestate, letters of administration are granted in the same order as if the executor named in a will was unwilling or unable to serve (see Appointing a Fiduciary Where Decedent Died with a Will).

The applicant requesting appointment should complete the official petition for grant of letters and appear in person before the register of wills (see Opening the Estate).

APPOINTING A PERSONAL REPRESENTATIVE IN URGENT OR UNUSUAL CIRCUMSTANCES

There is no formal procedure for appointing a personal representative in urgent or unusual circumstances in Pennsylvania.

QUALIFICATION AS PERSONAL REPRESENTATIVE

The following persons are not qualified to administer an estate regardless of priority or whether they are named in the will as executor:

- Those under 18 years of age.
- A corporation not authorized to act as a Pennsylvania fiduciary.
- A person (other than an executor designated in the will) the register finds to be unfit.
- The nominee of any beneficiary or heir of the estate when the beneficiary or heir is outside the US.
- Any person charged with voluntary manslaughter or homicide (except homicide by vehicle relating to the decedent's death).

(20 Pa. C.S. § 3155.)

Pennsylvania law does not prohibit an attorney drafting a will from serving as a personal representative of the estate. However, the attorney should be sensitive to potential conflicts of interest and the fact that the attorney may be called as a fact witness (Pa. Rules of Prof. Conduct, 1.7, 1.8, and explanatory comments).

8. Is a fiduciary bond required, and if so, in what circumstances?

Bond is required for all grants of letters except as follows (20 Pa. C.S. §§ 3171 to 3175).

Bond is not required of the following corporate personal representatives to administer an estate:

- A bank or trust company incorporated in Pennsylvania;
- A national bank having its principal office in Pennsylvania; and
- A foreign corporate fiduciary otherwise qualified to act the home state of which provides a similar exemption to that provided by Pennsylvania to domestic corporate fiduciaries.

(20 Pa. C.S. § 3174(a).)

Individual personal representatives are not required to post bond unless otherwise ordered by the court or required by the will:

- A personal representative named in the will:
 - that is a resident of Pennsylvania and or where the will waives bond; or
 - that is not a resident of Pennsylvania but intends to serve with a resident of Pennsylvania as a co-personal representative where no bond is required and the resident co-personal representative avers he or she intends to maintain control of the estate assets.
- A personal representative not named in the will that is a resident of Pennsylvania and is also:
 - the sole heir-at-law of an intestate estate or the sole residuary beneficiary of the will; or
 - has been nominated by all the heirs at law (of an intestate estate) or residuary beneficiaries (of a testate estate).

(20 Pa. C.S. § 3174(b).)

9. How are the key estate fiduciaries compensated?

In Pennsylvania, the orphans' court determines the personal representative's compensation as reasonable and just under the circumstances. (20 Pa. C.S. § 3537.) While the personal representative may waive compensation, provisions in the will providing compensation may be enforced if the personal representative accepts appointment with knowledge of the provision fixing the personal representative's compensation. (20 Pa. C.S. § 3537 and see *In re Lennig Estate*, 53 Pa. Super. 596 (1913), *In re Himes Estate*, 16 Chester 27 (O.C. 1967)).

To determine reasonable compensation, either in an intestate estate or in a testate estate if the will provides for reasonable compensation, many attorneys follow graduated percentage guidelines that are provided in Pennsylvania case law (*Johnson's Estate*, 4 Fid.Rep.2d 6, 8 (O.C. Del. Co. 1983)). Orphans' courts often approve compensation consistent with the compensation schedule in the *Johnson's Estate* case if the personal representative has faithfully and accurately completed the estate administration. However, the Pennsylvania Superior Court has criticized this compensation schedule in large estates (*Sonovick Estate*, 373 Pa. Super 396 (1988) and *Preston Estate*, 560 A.2d 160 (Pa. 1989)). Each case is also reviewed on an individual basis so there is no clear guideline or safe harbor of what compensation is to be allowed for an estate of a set value.

Counsel should also review local rules before determining reasonable fiduciary compensation because at least one county (Washington County) recently set guidelines for fiduciary and counsel compensation under a schedule that is greater than that specified by *Johnson's Estate* (*In re Donofrio Estate*, 5 Fid.Rep.3d 384 (O.C. Div. Wash. Cty. 2015)).

Fiduciary compensation in non-routine estate administrations frequently deviates from the guidelines provided by *Johnson's Estate*, especially in a complex estate administration or litigation. On the other hand, dilatory and error-filled administrations can be penalized by reducing compensation (*In re Fuess Estate*, No. 3, 5 Erie 223, 1923). Good judgment and prudence are the best guides in these cases. Each case is unique and should be individually reviewed. (*In re Gardener's Estate*, 185 A. 804 at 809 (Pa. 1936).)

INDIVIDUAL PERSONAL REPRESENTATIVES

Because there is not a fixed schedule for compensation, the court examines the efforts and performance of the personal representative when determining if the compensation requested in the accounting is approved. If the personal representative settles the estate informally with the consent of the beneficiaries or heirs of the estate compensation is generally not adjusted by the court. However, the court is not bound by any informal settlement.

MULTIPLE PERSONAL REPRESENTATIVES

When multiple personal representatives serve, the court generally does not permit fiduciary compensation to be stacked solely because multiple personal representatives are serving. The court instead examines the difficulty of the estate and the efforts of each personal representative. The number of personal representatives serving is a factor to be considered when determining compensation. (*In re Williamson Estate*, 82 A.2d 49, 54 (Pa. 1951).)

As a general rule, the court equally allocates compensation among multiple personal representatives regardless of the fact that one personal representative performed an unequal amount of effort as each personal representative remained equally responsible for the administration (see, for example, *In re Lansinger Estate*, 74 Pa. D. & C.2d 520, 26 Fiduc. Rep. 554 (O.C. Phila. 1976), but see *In re Stone Estate* 57 Pa. D. & C. 284 (O.C. Mercer 1947)).

If the personal representative has engaged the services of a corporate personal representative to assist with the administration this may reduce the compensation awarded to the individual personal representative.

CORPORATE PERSONAL REPRESENTATIVES

Corporate personal representatives typically charge according to a fee schedule which has been previously been submitted to the orphans' court (*In re Loutsion Estate*, 496 A.2d 1205 (Pa. 1985)).

DRAFTING ATTORNEY AS PERSONAL REPRESENTATIVE

10. What is the level of care that each estate fiduciary owes to the beneficiaries of the estate?

In Pennsylvania, the personal representative must exercise the judgement, skill, care, and diligence that a reasonable or prudent person ordinarily exercises in the management of his or her own affairs (*In re Estate of Westin*, 874 A.2d 139, 144 (Pa. Super. 2005)).

When the personal representative does not adhere to this duty, the court may surcharge the personal representative, even if the breach of fiduciary duty has not damaged the estate (*In re Noonan's Estate*, 63 A.2d 80, 82 (Pa. 1949)). The court applies a negligence standard when evaluating whether a personal representative's management of estate property warrants surcharge (*In re Bender's Estate*, 122 A.2d 283, 284 (Pa. 1923)).

Ordinarily, the party seeking surcharge bears the burden of showing failure to meet the required standard of care. However, when a patent error has occurred or there is a significant discrepancy on the face of the record, the burden may be shifted to the executor to present exculpatory evidence. (*In re Estate of Ellis*, 333 A.2d 728, 732 (Pa. 1975).)

ADMINISTERING THE ESTATE

11. What are the main duties of the estate fiduciary in administering the estate?

The main duties of the personal representative are to:

- Marshal and secure the estate assets.
- Administer the estate assets.
- Distribute the estate assets.

(20 Pa. C.S. § 3311.)

SECURING AND MARSHALING ESTATE ASSETS

The personal representative should secure the decedent's assets. This includes identifying the decedent's assets, which may include assets that are difficult to identify or locate, such as unclaimed property, savings bonds, and book entry stock. The Pennsylvania Treasurer's Unclaimed Property Website lists the unclaimed property of residents. A review of the decedent's most recent income tax return and property tax receipts, as well as a review of the decedent's incoming mail (which can be facilitated by having the decedent's mail forwarded to the personal representative), can help the personal representative identify the decedent's assets.

The personal representative should consolidate the assets of the estate and catalog them on the estate inventory, which the personal representative files with the register of wills (see Pa Courts: Inventory).

ADMINISTERING ESTATE ASSETS

After collecting the assets, the personal representative should file the decedent's final income tax returns, the Pennsylvania inheritance tax return, and the Federal estate tax return (if necessary). The personal representative should also use diligent efforts to identify and settle the decedent's debts before distributing estate assets to the beneficiaries (see Considerations for Creditor's Claims).

DISTRIBUTION OF ASSETS

The personal representative typically may proceed with final distribution of estate assets one year following the grant of letters. Unless waived, specific bequests and pecuniary legacies under the will bear interest at the rate of 5% from the decedent's death until payment for amounts bequeathed in trust and when not in trust from one year after the decedent's death until payment of the legacy. (20 Pa. C.S. § 3543 and see Probate Requirements.) The executor should therefore consider making advance distributions to satisfy bequests to curtail accrual of interest after reserving sufficient assets to pay any debts or taxes due.

12. What are the key documents and procedures in your state for ongoing estate administration?

After opening the estate administration, the personal representative should complete the following procedures:

- Dispose of any creditor claims (see Considerations for Creditor's Claims).

- File the Inventory and Pennsylvania Inheritance Tax Return within nine months of death (see Pennsylvania Inheritance Tax Return and Inventory).
- File an account or release agreement (often called a family settlement agreement) waiving a formal accounting (see Question 15: Accounting and Audit and Question 15: Release Agreement).
- File a status report starting two years after the decedent's death and annually after that until the estate is closed (Pa. O.C. Rule 10.6 and see PA Courts: Pa O.C. Rule 10.6 Status Report).

13. What are the due dates for key documents and processes during and after the estate proceeding?

Immediately following the grant of letters, the personal representative or the personal representative's counsel should publish notice (20 Pa. C.S. § 3162(a) and see Question 6).

NOTICE OF GRANT OF LETTERS

Within three months of the grant of letters, the personal representative or the personal representative's counsel should give notice to the beneficiaries or heirs at law of the estate. Within ten days, the personal representative should certify the notice to the court (see PA Courts: Notice of Estate Administration and Certification of Notice and Question 6).

Within three months of the grant of letters, if the decedent received medical assistance, the personal representative or the personal representative's counsel should give notice to the Pennsylvania Department of Human Services (see Question 14: Medical Assistance).

NOTICE OF CREDITOR CLAIMS

In Pennsylvania, the personal representative must advertise the grant of letters once a week for three consecutive weeks (20 Pa. C.S. § 3162(a) and see Question 6). Creditors have one year from the first complete advertisement of the grant of letters to recover claims against the personal representative. After the one-year period, a creditor can only recover if the personal representative receives the claim before the distribution (20 Pa. C.S. § 3532.) For more information on creditor claims, see Question 14.

ACCOUNTS AND STATUS REPORTS

The personal representative may file an account any time after four months from the first advertisement of the original grant of letters (20 Pa. C.S. § 3501.1).

Two years after the decedent's death (and annually thereafter), the personal representative must file a status report (Pa. O.C. Rule 10.6 and see PA Courts: Pa. O.C. Rule 10.6 Status Report). The status report is a short informational return informing the court if the administration is complete and if not when the estate is anticipated to be complete as well as if the accounting has been filed or if a release or informal accounting has been filed.

The personal representative must file a final status report when the administration of the estate is completed (Pa. O.C. Rule 10.6 and see PA Courts: Pa. O.C. Rule 10.6 Status Report).

DEATH TAX RETURNS

Pennsylvania Inheritance Tax and Inventory

Within three months of the decedent's death, Pennsylvania inheritance tax may be prepaid to receive a 5% discount (72 P.S. § 9142).

The Pennsylvania inheritance tax return and inventory must be filed with the register of wills within nine months of the decedent's death, unless an extension is requested. Whether or not an extension to file is granted, the inheritance tax is due nine months from the decedent's death. (72 P.S. §§ 9136 and 9142 and 20 Pa C.S. § 3301.)

The Pennsylvania Department of Revenue typically reviews inheritance tax returns and issues assessments within six months of filing.

Federal Estate Tax Return

The due date for filing a federal estate tax return is nine months after the decedent's death (26 U.S.C. § 6075). The IRS automatically grants a six-month extension for filing the return, if requested and filed before the due date of the return (26 C.F.R. § 20.6081-1(b)). If an estate has more than one personal representative, only one personal representative needs to sign the estate tax return. However, all personal representatives are responsible for the information contained on the return (26 C.F.R. § 20.6018-2 and see "Signature and Verification" section of the Form 706 Instructions). For more information on the federal estate tax, see Practice Note, Federal Estate Tax ([w-000-2504](#)).

ESTATE INCOME TAX RETURN

The due date for the estate income tax return, if necessary, varies depending on whether the estate is operating on a calendar year or a fiscal year. For calendar year estates, the return is due by April 15 of the year following the calendar year in which the estate received the income. For fiscal year estates, the return is due by the 15th day of the fourth month following the close of the tax year. A five-month extension is automatically granted on request. (See Instructions for IRS Form 1041.)

CONSIDERATIONS FOR CREDITOR CLAIMS

14. What is the procedure for notifying and paying creditors of the estate?

CREDITORS

In Pennsylvania, fiduciaries are not required to send notice of administration to the decedent's creditors. However, the personal representative or the personal representative's counsel must publish notice of the estate administration (see Notice of Administration). Creditors have one year from publication to recover claims against the personal representative. After the one-year period, a creditor can only recover from estate assets that were not distributed before receiving notice of the claim. (20 Pa. C.S. § 3532.)

Creditors have the option of filing a claim against the estate with the court. A creditor even may file a claim against an estate before a grant of letters. A claim is filed by completing a claim form and submitting it to the register (see Pennsylvania Courts Orphans Court Form OC-07). If a creditor files a claim with the court, the creditor

preserves the creditor's right to proceed against a distributee (recipient from the estate) of real property if:

- Real property is an estate asset.
- The personal representative does not pay the claim.
- The creditor filed the claim within one year of the decedent's death.

(20 Pa. C.S. § 3532(b) and see Distributee Liability.)

However, except for liens existing at death, claims against an estate become unenforceable against a bona fide purchaser of real property that bought the property from the heirs or beneficiaries more than:

One year after the death of the decedent if no grant of letters is in effect.

- During the year following death if no grant of letters has occurred.

(20 Pa. C.S. § 3385.)

If there is no real property in the estate or if the creditor is not otherwise concerned with preserving the right to proceed against distributees of real property, a creditor can instead give written notice of the creditor's claim to the personal representative or the personal representative's counsel before the statute of limitations on the creditor's claim has expired, which is sufficient notice to secure the claim (20 Pa. C.S. § 3384).

If the creditor presents the claim to the personal representative or counsel for the personal representative, the personal representative can pay the creditor's claim if the personal representative determines it is valid. If the creditor's claim is not paid in full and:

- The personal representative files a formal account, the court assesses the claim during the estate audit (see Notice to Creditors of Account and Presentation of Claim at Audit). In this case, before audit, the personal representative must serve the creditor with notice of the audit and the creditor may present the creditor's claim at audit (20 Pa. C.S. § 3384, 3386, and 3503).
- The personal representative does not file a formal account, the creditor can pursue action directly against distributees or the personal representative, except that the creditor cannot pursue action directly against the distributee of real property unless the claim has been formally filed in the court (20 Pa. C.S. § 3532).

MEDICAL ASSISTANCE

If the decedent received Medicaid or other medical assistance benefits within five years of death, the personal representative must request a statement of claim from the Pennsylvania Department of Human Services within three months of death (20 Pa. C.S. 3503, 55 Pa. Code § 258.8 and see PA Department of Human Services: Statement of Claim Request Form). It is the personal representative's responsibility, rather than the Department of Human Services, to ensure the department's claim is adequately presented and paid (55 Pa. Code § 258.8).

CREDITOR'S NOTICE TO THE ESTATE

The creditor's written notice to the personal representative or the personal representative's attorney of record of the creditor's claim constitutes adequate notice and tolls the statute of limitations against any creditor (20 Pa. C.S. § 3384(a)).

NOTICE TO CREDITORS OF ACCOUNT AND PRESENTATION OF CLAIM AT AUDIT

If the personal representative has not paid a creditor's claim, the personal representative must notify the creditor of the filing of the estate account (Pa. O.C. Rule 2.5). If the creditor receives notice of the filing of the account, the creditor must present the claim at the call for audit or the claim may be rendered unenforceable. Distant creditors often choose not to present the claim at audit, resulting in dismissal of the claim and barring recovery from the estate (20 Pa. C.S. § 3386).

FIDUCIARY AT-RISK DISTRIBUTIONS

The personal representative is liable to creditors for their claims against the estate if the personal representative makes distributions:

- Within one year of advertisement of the grant of letters.
- Following receipt of the claim, even if one year has passed.

(20 Pa. C.S. § 3532.) In either case, the personal representative is considered to have made at-risk distributions.

Distributions made after the one-year period after published notice but before notice of the claim has been received are not at-risk distributions (20 Pa. C.S. § 3532).

DISTRIBUTEES LIABILITY

A distributee generally is not liable to the creditors of the estate, even for at-risk distributions (see Fiduciary At-Risk Distributions). However:

- A distributee of any estate asset other than real property is liable to a creditor when:
 - the creditor presented a claim to the personal representative within one year of the advertisement of letters;
 - the personal representative did not pay the claim; and
 - the personal representative did not file a formal account (20 Pa. C.S. § 3532(b)(1)).
- A distributee of real property is liable to a creditor when the creditor filed a claim with the orphans' court during the first year of the estate administration (20 Pa. C.S. § 3532(b)(2)), but see Creditors and 20 Pa. C.S. § 3385).

CLASSIFICATION AND ORDER OF PAYMENT

If the estate is insufficient to pay all costs of administration and claims in full, the personal representative must pay them in the following order, pro rata, subject to any preference given by law to claims of the US:

- Costs of administration (including counsel fees).
- The family exemption, which is payable to the decedent's spouse or certain family members in the same household of the decedent (20 Pa. C.S. § 3121).
- The costs of the decedent's funeral and burial and medicines furnished six months before death, medical and nursing services performed within that time, hospital services within that time, services provided under a medical assistance program within that time, and services performed for the decedent by any of the decedent's employees (see 20 Pa. C.S. § 3101).
- Cost of a grave marker.

- Rent for the decedent's residence for the six months before death.
- Claims by the state of Pennsylvania.
- All other claims.

(20 Pa. C.S. § 3392.)

CLOSING THE ESTATE

15. What is the process for concluding (or closing) the estate?

Following approval of the inventory, appraisal of the inheritance tax return, and satisfaction or resolution of outstanding claims and liabilities, the estate should be closed. This can be done:

- Informally, by release agreement (sometimes called a receipt and release or a family settlement agreement).
- Formally, by filing an account of the administration of the estate and having the account approved by the court.

A personal representative is not required to prepare or file a probate accounting in Pennsylvania (20 Pa. C.S. §§ 3501 and 3501.1). Most estates are closed by release agreement, which does not require a court appearance, but also does not dispose of unpaid claims or other disputes (see Distributee Liability, Release Agreement).

In either instance, once the administration of the estate is complete, the personal representative must file a final status report with the register of wills, which informs the register that the administration is complete and whether an account was filed with the court. (Pa. O.C. Rule 10.6 and see PA Courts: Pa. O.C. Rule 10.6 Status Report).

RELEASE AGREEMENT

Release agreements allow the beneficiaries to approve the administration of the estate and to consent to the distribution of the estate assets. A release agreement may or may not include an accounting. While the form of release agreements varies, a typical agreement contains:

- A release of the personal representative for all actions taken during the administration.
- A summary of the financial transactions of the estate administration (see Status Report).
- The agreement of the beneficiaries to reimburse the executor for at-risk distributions made within the first year following appointment. This reimbursement provision is important, because a release agreement does not bar third-party claims for which the personal representative may be responsible, such as taxes that may be increased by audit following estate distribution.
- Some release agreements also contain:
 - An indemnification of the personal representative for third-party claims or other claims against the personal representative.
 - Representation of minor, unborn, or unknown beneficiaries of trusts funded by the estate by parents or other beneficiaries of the estate (20 Pa. C.S. §§ 7721 to 7726).

ACCOUNTING AND AUDIT

A release agreement may not be an option or may not be the best option to protect the personal representative if:

- The estate is insolvent.
- There are unsatisfied claims.
- The beneficiaries are unwilling to sign a release agreement.
- Future beneficiaries of trusts funded by the estate cannot be adequately represented in the release agreement.
- There are other issues requiring court adjudication, such as approval of fees or proposed distributions.

In these cases, the personal representative should settle the estate using the formal accounting and audit process. In this process, the personal representative prepares and files a formal accounting, petition for adjudication and statement of proposed distribution. The personal representative also gives notice of the filing to:

- Beneficiaries.
- Creditors with outstanding claims (including claims that have not been filed with the orphans' court).
- Any other party that the personal representative wishes to be bound by the adjudication.

(20 Pa. C.S. §§ 3501.1 and 3513, Pa. O.C. Rule 2.4 and 2.5, and see PA Courts: Petition for Adjudication – Decedent's Estate and Model Estate Account.)

If any notice is given to a charity, notice must also be delivered to the Pennsylvania attorney general (Pa. O.C. Rule 2.5(c)). Notice must be given at least 20 days before the audit in those counties with an orphans' court division or 20 days before the objection date in other counties (Pa. O.C. Rule 2.5(d)).

Any party with an interest in the distribution of the estate, such as a beneficiary, creditor, or charity, may file objections to the accounting and statement of proposed distribution before the audit or objection date (20 Pa. C.S. § 3513, Pa. O.C. Rule 2.7.)

The account is then set for audit according to the audit calendar in those counties that hold audits. At the audit, the attorney presents the account before the court, and any claims must be presented (20 Pa. C.S. § 3386). After adjudicating claims and objections, the court issues a decree of distribution expressly approving the accounting or modifying the distributions as adjudicated. This decree discharges the personal representatives from the transactions shown in the account (Pa. O.C. Rule 2.9).

In counties that do not hold audits, if no objections are received by the objection date, the account is reviewed and confirmed by the court at which time a decree of distribution is issued (Pa. O.C. Rule 2.9).

The account may be confirmed *nisi*, meaning that the accounting is to be confirmed with a set time period provided that no objections are received within that period and the court approves the account at audit (see, for example, Allegheny County O. C. Rule 2.9, Section 1.)

The orphans' court may not notify counsel of the date set for audit, so counsel should check the court's audit schedule and calendar. On the court's confirmation of the accounting and issuance of the decree of distribution, the personal representative may distribute the estate assets under the decree of distribution set out in the accounting (20 Pa. C.S. § 3513).

16. Please describe if there is any special action needed to discharge the estate fiduciary from continuing liability for actions taken on behalf of the estate.

Under Pennsylvania law, a personal representative is not required to seek a release or indemnification. However, when concluding an estate, a personal representative typically seeks ratification of and indemnification for all actions during the personal representative's appointment.

In Pennsylvania, this process is either performed by:

- Release agreement, where the personal representative presents an accounting (or asks for a waiver of the right to an accounting and presents financial statements and other records) to the beneficiaries and interested parties and obtains receipt and release documents from them (see Release Agreement); or
- Judicial accounting, where the personal representative formally presents an accounting to the court and all parties for approval (see Accounting and Audit).

If the personal representative files a judicial accounting, a court confirmation of the accounting terminates the personal representative's liability for the actions disclosed on that accounting. Similarly, the personal representative is discharged from all liability for distribution of estate assets under the decree of distribution issued by the court. (20 Pa. C.S. § 3533.)

If the beneficiaries release the personal representative by agreement, the personal representative remains liable to the court and those who are not party to the release agreement.

EXPENSE AND TIMELINE

17. What are the expected costs for a typical estate proceeding?

EXPECTED COSTS

The primary costs of an estate proceeding in Pennsylvania are:

- Filing fees (including those for petition for grant of letters and inventory).
- Federal estate tax.
- The decedent's final income tax.
- Pennsylvania inheritance tax (up to 15% of taxable estate).
- Accounting fees.
- Attorney fees.
- Bond fees.
- Valuation and appraisal fees.

The expected costs of an estate proceeding vary depending on:

- The size of the estate.
- The nature and complexity of the estate assets.
- Whether a bond is required.
- Whether there are any challenges to the estate.
- How involved a lawyer must be in the estate matters.

18. How long does the typical estate proceeding take?

The typical timeline for opening and closing an estate in Pennsylvania varies depending on factors, such as:

- The nature and complexity of the estate assets.
- The ease of locating the decedent's heirs.
- Whether there are any challenges to the estate.
- The volume of work the court has when the will is offered for probate.

Because of the one-year at-risk distribution period and tax filing due dates, most estate administrations take at least one to two years to complete. For more information on the at-risk distribution period, see Question 14: Fiduciary At-Risk Distributions.

The month of death also impacts the length of the administration. For example, if a decedent died in December, the decedent's final income tax return may be filed the following spring. However, if the decedent died in February, the decedent's final income tax return may not be able to be filed until late in the year following the year of death. Under these circumstances, a routine administration may take two years. Litigation or federal estate tax liability can easily extend the period of an estate administration to three years and beyond.

MISCELLANEOUS ESTATE PROCEEDINGS AND PROCESSES

19. Please list and describe any simplified or special proceedings or non-court processes for transferring a decedent's assets at death that are available in your state.

SETTLEMENT OF SMALL ESTATES ON PETITION

If a Pennsylvania domiciliary dies with property not exceeding \$50,000 (exclusive of real property and certain property payable to family and funeral directors), any interested party may petition the orphans' court to direct distribution of the estate (20 Pa. C.S. § 3102). Local practice regarding settlement of a small estate by petition varies. Accordingly, counsel should consult local rules and the register's office.

Settlement by petition becomes unwieldy if the estate contains assets, debts, or expenses that cannot be readily determined before the appointment of a personal representative, because they must be listed in the petition for settlement.

ANCILLARY PROCEEDINGS

Ancillary probate or administration is a proceeding used to administer Pennsylvania property owned by a non-domiciliary or to maintain a cause of action by a non-domiciliary in Pennsylvania courts, without opening a full Pennsylvania estate. The process and procedures can vary based on whether the primary administration was based on a will. (20 Pa. C.S. §§ 3136 and 4101 to 4121 and see Practice Note, Ancillary Probate in Pennsylvania ([w-013-5324](#))).

TEMPORARY FIDUCIARY ADMINISTRATION

Temporary Fiduciary Administration is a means by which a temporary personal representative may be appointed whenever a personal

representative is in military service, has a conflict of interest, or any other situation where the appointed personal representative's functioning may not be in the best interests of the estate (20 Pa. C.S. §§ 4301 to 4306). Temporary fiduciary administration can occur whether or not the decedent died with a will. The court may authorize a co-personal representative or a substituted personal representative to exercise some or all of the incapacitated personal representative's powers (20 Pa. C.S. § 4301). The prior personal representative is relieved from the personal representative's duties during the administration of the temporary personal representative (20 Pa. C.S. § 4305).

PAYMENTS TO FAMILY AND FUNERAL DIRECTOR

In addition to settlement by petition, certain payments can be made directly to the decedent's spouse, child, father or mother, or sister or brother (in that order of preference):

- An employer may pay up to \$10,000 of wages due to a decedent (20 Pa. C.S. § 3101(a)).
- A financial institution may pay up to \$10,000 held in the decedent's account (20 Pa. C.S. § 3101(b)).
- An insurance company may distribute life insurance proceeds payable to the decedent's estate of \$11,000 or less any time after 60 days following the decedent's death, if at the time of payment, no written claim on the policy has been received from a duly appointed personal representative (20 Pa. C.S. § 3101(d)).
- The state treasurer may distribute unclaimed property if the amount of the property is \$11,000 or less (20 Pa. C.S. § 3101(e)).

A facility in which a decedent was a patient may make payment for the decedent's burial expenses to a licensed funeral director up to \$10,000 from the decedent's patient care fund. After the payment of burial expenses, the facility may pay the balance, up to \$10,000, to the decedent's spouse, child, father or mother, or sister or brother (in that order of preference). (20 Pa. C.S. § 3101(c).)

WAIVER OF PROBATE REQUIREMENTS AND FORMAL PROBATE

20. What types of estate proceedings or probate requirements can be waived by will in your state? Specifically, please discuss:

- Whether any particular language is required to accomplish a waiver and if so, please include the language.
- Whether it is common to waive these estate proceedings or probate requirements.

ESTATE PROCEEDINGS

Estate proceedings cannot be waived for probate assets by will in Pennsylvania, but abbreviated administration procedures are available in addition to non-probate planning by eliminating or reducing probatable assets (see Miscellaneous Estate Proceedings).

PROBATE REQUIREMENTS

In Pennsylvania, a will typically contains a provision waiving the requirement for a personal representative to purchase a fiduciary bond. An example of typical language waiving bond in a will is "no personal representative appointed by this will shall be required to post bond in any jurisdiction." However, this provision is only effective for an executor nominated in the will. The court can also still order a bond in those circumstances (20 Pa. C.S. § 3174(b).) For more information on bond, see Question 8.

The will may also waive the statutory interest otherwise required on pecuniary legacies (20 Pa. C.S. § 3543). For more information on statutory interest, see Question 11: Distribution of Assets.

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