

LOS ALAMOS COUNTY PROBATE COURT



THE DUTIES OF A PERSONAL REPRESENTATIVE

Before the assets of a deceased person's (the *decedent*) estate may be distributed to *heirs* or *devisees*, certain legal requirements must be met. First, a Personal Representative must be appointed by the Court. Once this has occurred, the Personal Representative is responsible for addressing any claims by creditors of the *estate*, and for distributing the estate's assets.

This is a guide to those seeking to utilize the process of informal probate through the Probate Court. It does not address every issue or question that may arise. Nor does it provide legal advice. You are encouraged to consult an attorney if you have questions about the law or process.

A glossary of terms is provided at the end of this guide that defines legal terminology with which you may not be familiar.

BEGIN THE PROCESS - APPOINTMENT OF A PERSONAL REPRESENTATIVE: *Who and How...*

Who: The Probate Court may only appoint certain individuals under a priority system established by statute. Those individuals may include: the individual named as Personal Representative in the Will (if one exists); the surviving spouse, heirs or devisees or other *interested person*.

How: The person seeking to establish his or her legal authority as the Personal Representative may apply through the Probate Court. A packet of forms and instructions is available at the Los Alamos County Clerk's Office or on-line at the New Mexico Supreme Court website: <http://www.supremecourtlibrary.org/prob.htm>.

The forms and instructions differ depending on whether the decedent died with or without a Will. If the applicant is acting without an attorney, use of these forms is strongly encouraged as the New Mexico Supreme Court has determined that they meet legal requirements. Individuals intending to use these forms should read the instructions carefully as they identify what forms are needed at each phase of the probate.

Application for Appointment of Personal Representative

- A completed **Application for Informal Probate of Will** (if a valid Will exists) or **Application for Informal Appointment of Personal Representative** (if no Will exists) initiates the process and includes:
 - The name of the applicant and his/her relationship to the decedent
 - Indication of decedent's domicile (primary residence of the deceased at time of death)
 - Names and complete addresses of:
 - 1) Surviving spouse
 - 2) Children of the decedent
 - 3) Other heirs
 - 4) Devisees
 - Ages of any minor children of the decedent
 - Date of decedent's death
 - Age of decedent at time of death
 - Concurrence of individuals with equal or higher priority for appointment
 - Signature of Applicant
 - Name, address and phone number of applicant
 - Notarized Verification
- **Death Certificate (or other credible proof of death)**
- **Original Will (if any)**
- **Order of Informal Probate** (if Will exists) or **Order of Informal Appointment of Personal Representative** (if no Will exists)

- **Acceptance of Appointment** (notarized)
- **Letters Testamentary** (if Will exists) or **Letters of Administration** (if no Will exists)
- **Filing fee (\$30)**

[Supreme Court forms: 4B-101 or 4B-102; 4B-103 or 4B-104; 4B-105; 4B-106 or 4B-107]

NEXT STEPS: NOTICES TO HEIRS, DEVISEES AND CREDITORS

The Personal Representative is responsible for notifying those individuals with a possible interest in the assets of the estate that he or she has been appointed and that the process of probate has been initiated.

Within ten (10) days of appointment (required):

- **Notice of Informal Appointment of Personal Representative** to heirs and devisees of the Estate (and any interested person who had demanded notice)
 - **Proof of Notice** specifying who received notice is required must be filed with the Court.

[Supreme Court forms: 4B-201; 4B-202]

Within three (3) months of appointment:

- The Personal Representative gives **Notice to Known Creditors** (required)
- And may issue **Notice to Creditors** by publication(not required)
 - If done, notice must be published in a newspaper of general circulation in the county, and must be published once a week for two successive weeks. The deadline for filing claims is shorter if notice is published.
 - Original **Affidavit of Publication** from the newspaper must be filed with the Court.

[Supreme Court forms: 4B-301; 4B-302]

- Prepare **Inventory** of Estate assets (required)
 - Personal Representative must give a copy of the inventory to any interested person who requests it.
 - The inventory should include reasonable descriptive detail and the estimate value of the assets.
 - Personal Representative may hire an appraiser but is not required to do so.
 - The inventory may be filed with the Court, but this is not required.

[Supreme Court form: 4B-401]

CLAIMS AGAINST THE ESTATE

Creditors have two (2) months after the mailing of the written notice or the first publication of the published notice to submit a claim against the Estate to the Personal Representative.

- The Personal Representative has 60 days to notify the creditor whether the claim is accepted or rejected. If this deadline is not met, the claim will be deemed a valid claim.
- The Personal Representative pays valid claims from the assets of the Estate or makes other arrangements to do so.

DISTRIBUTION OF THE ASSETS

Before the Personal Representative distributes the assets to heirs and/or devisees, he or she must pay the New Mexico family and personal property allowances (if any), federal and state income and estate taxes (if owed), and other bills. The Personal Representative should also pay the costs of administering the estate, such as appraiser fees, publication fees and other similar costs, before asset distribution.

The provisions of the Will or the intestate laws, if no Will exists, dictate how the assets should be distributed.

- The heirs and devisees may agree to a different asset distribution from the terms of the Will or intestate succession laws, but the agreement must be: 1) in writing; 2) signed by all who are affected by the agreement; 3) and filed with the Court.

ACCOUNTING

Before the Personal Representative can close the probate, he must provide an **Accounting** to all parties who received assets of the estate. The accounting lists the value and distribution of the estate assets. The accounting need not be filed with the Court.

[Supreme Court form: 4B-501]

FINAL STEPS: CLOSING THE ESTATE

To officially close the probate, the Personal Representative must file:

- **Verified Statement of Personal Representative** that verifies that:
 - At least 3 months have elapsed since the case was opened.
 - The time for filings claims against the estate has expired.
 - All claims have been paid or otherwise resolved.
 - All assets have been distributed to those individuals entitled to receive them.
 - The estate is ready to be closed.
- **Certificate of Full Administration** is filed a year after the Verified Statement and the probate estate is considered closed.

[Supreme Court forms: 4B-502; 4B-503; 4B-504]

Glossary of Terms

Decedent – the deceased person whose estate is the subject of the probate process.

Devisee – a person designated in a Will to receive real or personal property from the decedent’s estate.

Estate – includes property of the decedent that is subject to disposition under the probate statute.

Heir(s) - persons, including surviving spouse and the state, who are entitled under the statutes of intestate (no Will) succession, to property of the decedent’s estate.

Interested person(s) – heirs, devisees, children, spouses, creditors, beneficiaries or others having a property right or claim against the decedent’s estate.

Intestate – refers to the fact that the decedent died without a valid Will.

CONTACT INFORMATION

Probate Court
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