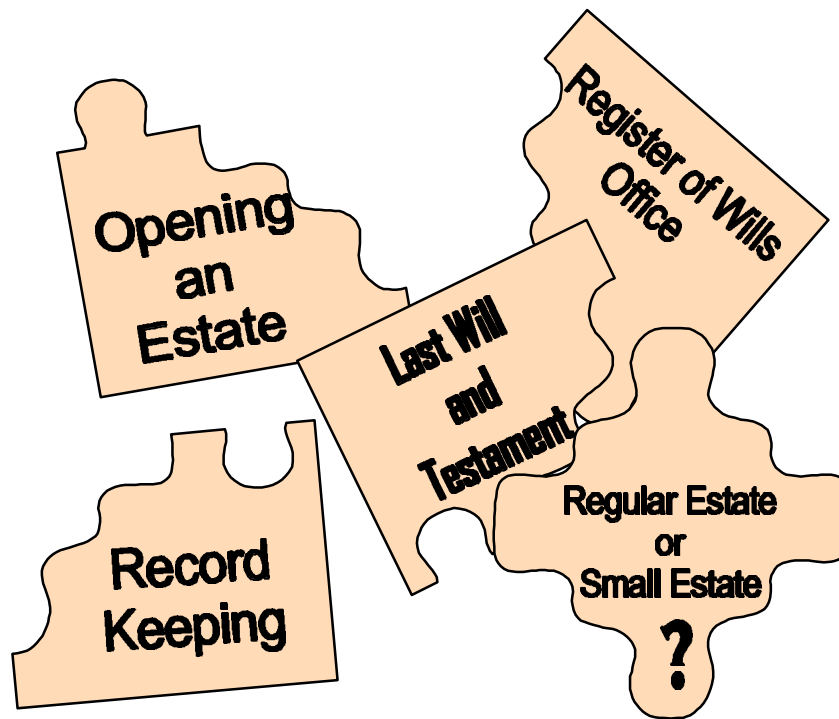
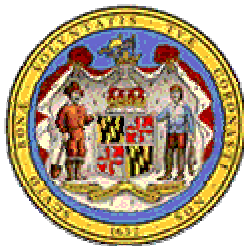


# ADMINISTERING ESTATES IN MARYLAND



*A Basic Instructional Guide*

Maryland Attorney General's Office  
J. Joseph Curran, Jr., Attorney General



## **OFFICE OF THE ATTORNEY GENERAL**

**200 Saint Paul Place  
Baltimore, Maryland 21202**

**Dear Friends:**

**A relative or friend's death can be a very difficult and emotional time. Not only must you deal with the loss, but also the often-complicated process of settling the estate.**

**If you are selected as a personal representative, you may have questions about how estates in Maryland are administered. That's why my office, in cooperation with the Register of Wills, produced this booklet offering basic guidelines.**

**In some instances you may be able to administer an estate entirely without an attorney's help or you may be able to accomplish some of the steps on your own before seeking legal counsel.**

**We hope this booklet provides useful information to those of you who want to know more about administering estates in Maryland.**

**Sincerely,**

A handwritten signature in black ink, reading "J. Joseph Curran, Jr.", written in a cursive style.

**J. Joseph Curran, Jr.  
Attorney General of Maryland**

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***Acknowledgement:***

***Susan P. Whiteford, Assistant Attorney General, Courts Division, Counsel to the Registers of Wills and Orphans’ Court Judges, for developing, writing, and updating this publication.***

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## Chapter 1

### Introduction

**T**he Maryland Court of Appeals has adopted rules and forms to be used in settling a decedent's estate. The purpose of this booklet is to better inform you about this procedure and how to prepare the necessary forms in the event that you are selected to act as a personal representative of an estate. The booklet only discusses the most common forms used in administrative probate. More information about the forms discussed in this booklet, along with other forms, can be found in the Maryland Rules of Procedure, Title 6, available at most public libraries. *All forms for settling a decedent's estate are available in the Office of the Register of Wills in the county where the decedent lived.*

Please bear in mind that this booklet addresses only the Maryland aspects of estate administration. It does not include any information about state or federal income or estate tax returns. It also does not address the administration of estates with property that may be subject to another state's jurisdiction.

We realize that the booklet will not answer all of the questions you may have. We, therefore, strongly advise you to seek professional advice whenever you have a legal question, because *this booklet is not intended to be a substitute for professional, legal or financial services.*

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## Chapter 2

### Register of Wills

**A**n estate is administered in the county where the decedent had his or her legal residence (domicile). Each county and Baltimore City has an Office of the Register of Wills. The Register of Wills is a public office established under the Constitution of Maryland. The Register of Wills is elected every four years.

The Register of Wills, or a designated employee, is authorized by law to assist or advise people about preparing forms

for administrative probate. The probate forms described in this booklet may be obtained from the Office of the Register of Wills.

Although the Register oversees the administration of a decedent's estate and is authorized to provide assistance to people administering estates, the Register is not authorized to give legal advice.

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## Chapter 3

### Orphans' Court

**T**he Orphans' Court, also located in each county and Baltimore City, has jurisdiction over estates of deceased persons. The Orphans' Court hears all matters involving contested estates and supervises all estates that are probated judicially. (Judicial probate, a proceeding that takes place when matters cannot be handled administratively, is outside the scope of this booklet.)

The Orphans' Court approves accounts and, when required, awards the personal representative's commission and the

attorney's fee. The Orphans' Court resolves matters involving the validity of wills and the transfer of property in which legal questions and disputes occur. Because the Orphans' Court has limited jurisdiction, generally questions of title must be determined by the circuit court. An Orphans' Court has jurisdiction to determine whether personal property, not exceeding \$20,000 in value, is includable in the estate, subject to a proceeding before the Court.

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## Chapter 4

### Why an Estate is Opened

**A**n estate must be "opened" for every person who dies with or without a will while owning real and/or personal property in his or her name alone.

The purpose of opening the estate is to report all assets the decedent owned to the Register of Wills. The Register of Wills appoints a personal representative to administer the estate and distribute the decedent's property. (See Chapter 9, Distribution.) As personal representative, you must pay the debts, death taxes, if applicable, income taxes, and costs of

administration out of the estate's assets.

The two types of estates in Maryland are the regular estate and the small estate. A regular estate is opened when the decedent's assets in his or her name alone or as tenants in common exceed \$30,000 (\$50,000 if the spouse is the sole heir or legatee). A small estate is opened when the assets in the decedent's name alone or as tenants in common have a value of \$30,000 or less (\$50,000 or less if the sole heir or legatee is the surviving spouse).

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*Note: Whether you can proceed under a regular estate or a small estate will vary depending on the date of death. If the decedent died prior to July 1, 2000, you should consult the Office of the Register of Wills to determine the law in effect at date of death.*

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## Chapter 5

### The Regular Estate

#### A. Opening the Regular Estate

The regular estate is opened for a decedent who owned assets in his or her name alone or as tenants in common with a value in excess of \$30,000 (\$50,000 if the spouse is the sole heir or legatee). You may obtain all forms mentioned in this section from the Register of Wills Office of the county where the decedent lived.

*Note: If the decedent died prior to July 1, 2000, consult the Register of Wills to determine if you should proceed with a regular estate or a small estate, since the value of each type estate and the method used for valuing them are determined by the date of death of the decedent.*

##### **1. Preliminary Forms: Petition for Probate and Schedule A, Notice of Appointment, Bond**

The Petition for Probate starts the process of officially opening the estate and appointing the personal representative. The person designated personal representative by the decedent in the will usually files this form. If that individual is not available, or if there is no will, another person entitled to serve may file and request appointment as personal representative.

The Petition for Probate also informs the Register of Wills whether the decedent died with or without a will. If the decedent died with a will, the original will must be

filed with the Register. The Schedule A lists the approximate value of property owned solely by the decedent at death.

When you file the Petition for Probate, it must be accompanied by two other forms: the Notice of Appointment (in duplicate), and the Bond, or Nominal Bond, of Personal Representative.

At the expense of the estate, the Register of Wills places the Notice of Appointment in a local newspaper of general circulation that you select. Once a week for three consecutive weeks after your appointment, the Notice announces your appointment as personal representative, gives your address, and notifies creditors when and where to present claims. The Notice of Appointment also explains how someone can file an objection to the Register's appointment of you as personal representative.

As a condition to appointment, you must post a bond to insure that your duties are faithfully performed. The amount of the bond is set by the Register of Wills. Even if the bond requirement is expressly waived by the will, or by all persons entitled to inherit the decedent's property, Maryland law requires you to post a nominal bond to secure the payment of inheritance taxes, probate fees, court costs, and the decedent's debts.

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## 2. Appointment of the Personal Representative

After the Petition for Probate has been completed, the Register of Wills may admit the will to probate and sign the Administrative Probate Order, which appoints you personal representative. The Register then issues Letters of Administration to the personal representative. If the decedent did not name a personal representative in the will, or if there was no will, Maryland law sets forth an order of priority of who is entitled to serve as personal representative. Generally, the order of priority progresses from family members such as the spouse, children, grandchildren, parents, etc., to creditors or any other person.

Maryland law excludes certain people from serving as personal representative, even if they fall in the order of priority. Some persons excluded are as follows:

- a person under eighteen;
- a mentally incompetent person;
- a person convicted of a serious crime;
- a person who is not a citizen of the United States (unless the person is the spouse of the decedent and a permanent resident of the United States);
- a nonresident of this State, unless there is on file with the Register of Wills an irrevocable designation of a person who resides in Maryland on whom service can be made. (This form does *not* authorize a resident agent to act on behalf of the personal representative.)

## 3. List of Interested Persons

An accurate and complete List of Interested Persons, with current addresses, is vital to the proper administration of the estate. You may file the List of Interested Persons at the same time as the Petition for Probate. If not filed at the same time, the List of Interested Persons must be filed within twenty days after your appointment as personal representative.

The List of Interested Persons includes the name, address and relationship to the decedent of all persons named in the will as legatees, as well as all of the decedent's heirs (persons who would inherit by Maryland law if there were no will: surviving spouse, children, etc.), even if the decedent's heirs are not named in the will. It also names the personal representative if one was named in the will. If the decedent had no will, the List of Interested Persons lists only the decedent's heirs and the personal representative.

At the expense of the estate, the Register of Wills is required by law to send by certified mail, return receipt requested a copy of the newspaper Notice of Appointment to each person on the List of Interested Persons. To satisfy this requirement and the requirement of the United States Postal Service, the name and address of a charitable organization must include the name of an individual within the organization who is authorized to receive the Notice. You *must* give the Register of Wills enough copies of the actual Notice of Appointment, as published in the newspaper, for distribution to *all* interested persons.



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## **B. Administration of the Regular Estate**

### **1. Responsibility of the Personal Representative**

As personal representative, you hold an extremely important office and have the fiduciary responsibility of insuring that the estate is properly administered. Make absolutely sure that estate property is separate from your own property. *You should open an estate bank account through which all estate business is conducted.*

You are also obligated to keep receipts and accurate records of all expenses and payments while administering the estate, because you must account for all financial activity before the estate can be closed. Your records are subject to audit by the Register of Wills and the court.

### **2. Actual Notice to Creditors and Payment of Claims**

Before any beneficiary can inherit from the decedent, the decedent's debts must be paid. As personal representative, this is one of your most important duties. *You are under a duty to make a reasonably diligent effort to locate each creditor's name and address.* In addition, you must deliver or mail by first-class mail, postage prepaid, a copy of the Notice of Appointment to all of the decedent's creditors whose names and addresses are known. *Thereafter, you are under continuing duty to send a copy of the Notice of Appointment to any creditor found before the deadline expires for filing claims.* This deadline is the earlier of six months after the decedent's death (six months from the first appointment of a personal representative, if the decedent was a Maryland Medical Assistance

Program recipient), or two months after you mail the actual Notice. Claims against the estate must be made within this time period.

Prior to the appointment of a personal representative, a claim is filed directly with the Register. (Be sure to review the claims docket at the Register of Wills Office upon your appointment.)

After the appointment of the personal representative, a claim is filed by (1) serving you as personal representative, (2) filing the claim with the Register and serving you as personal representative, or (3) filing suit. You must either pay the claim, or disallow the claim (in full or partially) on the prescribed form.

Upon the expiration of the six-month period from the date of death of the decedent for filing claims, the personal representative must pay all claims allowed against the estate. If there are insufficient assets to pay all claims, Maryland law provides a priority of payment of claims for an insolvent estate.

### **3. Inventory Report**

You must file the Inventory Report within three months after your appointment as personal representative. The Inventory Report is the form used to report the assets held in the decedent's individual name or as tenants in common. Describe each item on the Inventory Schedule in reasonable detail and indicate its appraised gross fair market value as of the date the decedent died. Also, describe any encumbrance on any item. Real and leasehold property must include Liber (book) and folio (page) numbers, as referenced on the deed or other recorded instrument. In listing personal property, wearing apparel need not be listed, except for furs and jewelry.

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Personal representatives are allowed to appraise only corporate stock listed on the national or regional exchange, over-the-counter securities, debts owed the decedent, bank accounts or savings and loan association shares, and cash. All other items must be appraised by a qualified and disinterested appraiser.

For decedents dying on or after January 1, 1998, instead of an appraisal for real or leasehold property, you can use the full cash value for property tax assessment purposes as of the most recent date of finality. (This valuation method cannot be used for farmland, woodland, or national registry land.)

#### **4. Information Report**

The Information Report, which must be filed within three months after your appointment as personal representative, lists all property the decedent owned or co-owned that is not listed on the Inventory Report. The personal representative is required to file an Information Report in all estates. However, for decedents who die on or after July 1, 2000, it is only necessary to report and value property passing to someone who is subject to the Maryland inheritance tax. (See Chapter 8, Inheritance Tax.)

When required, because property is passing to someone subject to tax, the valuation requirements are the same as those explained above for the Inventory Report.

The Information Report includes:

- jointly held property;
- any transfer of a material part of the decedent's property within two years of death that was in the nature of a final disposition (including property placed in a joint tenancy, trust, or joint bank account);

- any property over which the decedent retained an interest such as a retained life estate in a deed or a trust, whether
- the trust is revocable or irrevocable;
- joint or P.O.D. bank accounts and U.S. Savings Bonds;
- any interest in a public or private pension or benefit plan' including any I.R.A.;
- any interest less than absolute in real or personal property such as a life estate or interest in a trust; or
- any real property owned by the decedent located outside of Maryland.

If any of the decedent's property was owned jointly, held in trust, or in an interest less than absolute, the Information Report must be filed.

#### **5. Personal Representative's Commission and Attorney's Fee**

##### **a. When court approval is required**

As a personal representative, you are entitled to receive a commission for the work you perform for the estate. If you hire an attorney to assist you in the administration of the estate, the attorney is entitled to be paid for legal services. Except for subsection (b) below, *the personal representative's commission and attorney's fee must be approved by the Orphans' Court and, under no circumstances, is a personal representative or attorney entitled to a commission or fee until the commission or fee has been approved by the Orphans' Court.* The Orphans' Court will consider the total amount of personal representative's commission and attorney's fee requested in light of all circumstances of the estate. Maryland law sets guidelines for a personal representative's commission.

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The commission that you are awarded as personal representative is subject to income tax.

To receive your personal representative's commission, or for the attorney to be paid, a petition must be filed with the Orphans' Court stating, in reasonable detail, the duties performed as personal, representative and/or the legal services provided by the attorney. Each unpaid creditor who has filed a claim and each interested person must be sent a copy of the Petition for Personal Representative's Commissions and/or Petition for Attorney's Fees, along with a Notice stating that they have twenty days after service of the petition to file written exceptions with the court and to request a hearing.

**b. When court approval is not required**

In certain circumstances, for persons dying on or after January 1, 1998, payments of commissions to personal representatives and fees to attorneys can be made without court approval provided:

(1) each unpaid creditor and all interested persons consent in writing to the payment; and

(2) the combined sum of the commissions and fees does not exceed the amount in Estates and Trusts, § 7-601; and

(3) the signed written consent form states the amount of payment and is filed with the Register. When rendering the account, the personal representative must designate any payment made under this section.

**6. Accounts**

The following is a very general overview of the account requirements. For

greater detail, *see* Maryland Rule 6417, available in most libraries. It may also be advisable to seek professional assistance to assure that the account is properly prepared and filed.

No specific form exists for filing an account, although its preparation is one of your main duties as personal representative. You must file the initial account with the Register within nine months of the date of your appointment as personal representative. Thereafter, you must file subsequent accounts at intervals of the first to occur of (a) six months after the prior account is approved by the Orphans' Court, or (b) nine months after the prior account was filed, until the close of the estate.

Upon written application to the court or Register, for good cause shown, the court or Register may extend to a specified date the time for filing an account. If an estate has had no assets during the accounting period, the personal representative may file an affidavit of no assets instead of an account. You must account for the total value of the property shown on all Inventories. You are required to submit an itemized listing of all estate receipts during the accounting period, showing the amount and a description of the receipts. You must account for all financial activity in the estate, including purchases, rent, sales, redemptions, and dividends, etc. Include an itemized list of all payments and disbursements that satisfy estate liabilities, including funeral expenses, family allowances, filing fees, appraisal fees, death taxes, personal representative's commission, attorney's fee, and all other expenses of administration. The account must disclose your proposed distribution to

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estate beneficiaries and, if applicable, set forth the amount of inheritance taxes due.

Every account or affidavit must be signed by you and include the following statement of verification: "I solemnly affirm under the penalties of perjury that the contents of the forgoing account are true to the best of my knowledge, information, and belief."

When the account is filed, you must also file a certification with the Register stating that notices were sent to all interested persons, informing them that the account has been filed. The certification must list the names and *current addresses* of all interested persons who received a copy of the notice. (Of course, along with the Notice, you can provide a copy of the account for each interested person.)

The notice that the account has been filed must provide each interested person with the following information.

- that an account or affidavit has been filed;
- that the recipient has twenty days from the Court's Order approving the account to file exceptions;
- that further information can be obtained by reviewing the estate file in the Office of the Register of Wills, or by contacting the personal representative or attorney;
- that upon request, the personal representative must provide a copy of the account or affidavit; and
- that distribution under the account, as approved by the Court, will be made within thirty days after the Court's Order approving the account becomes final.

## **C. Closing the Regular Estate**

The Register of Wills is required to audit the account and has the right to require you to furnish proof of any disbursement or distribution shown in the account. After the Register's audit, the account is submitted to the Orphans' Court for approval.

It is important to remember that if exceptions to the account are filed, they must be filed within twenty days after the entry of the Court's Order approving the account. A copy of the exceptions must be served on the personal representative. When the Orphans' Court approves the final account, and after the assets have been distributed, the estate is considered closed.

## **D. Income Tax and Maryland and Federal Estate Tax**

A fiduciary income tax will be due if estate income earned during the estate administration exceeds a certain limit. Also, the commission you are awarded as personal representative is subject to income tax. You should contact the Office of the Comptroller, the IRS, or a tax consultant for information.

If filing a federal estate tax return on the decedent's estate is necessary, you must also file a Maryland estate tax return. Maryland inheritance taxes are allowed as a credit on the Maryland estate tax.

The federal estate tax, the Maryland estate tax, and the income tax are beyond the scope of this publication and are mentioned only so that you are aware of them.

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## E. Miscellaneous Forms

In addition to the forms described in this chapter, the following forms may be needed in some estates:

- **Election to take Statutory Share**

Rather than accept the share left by will, or if omitted from the will, a surviving spouse may elect to take a statutory share of the estate. (See Chapter 9, Distribution, for additional information.)

- **Petition and Order for Funeral Expenses**

Unless the will provides otherwise, funeral expenses must be approved by the Orphans' Court if they exceed the statutory allowance provided by law.

- **Appointment of Resident Agent**

When a personal representative lives out of state, he or she must appoint a person who resides in Maryland on whom service of process may be made. The person must agree to the appointment, however, *this form does not authorize a resident agent to act on behalf of the personal representative.*

- **Waiver of Notice**

By signing a Waiver of Notice, an interested person gives up a right to receive notice of any matters so indicated on this form. (The waiver may be revoked with notice to the personal representative.)

- **Consent to Appointment of Personal Representative**

(waiver of right to appointment)

A person named as personal representative in the will, or one who

has priority if there is no will, may decline and give consent to the appointment of another person.

- **Caption (form of court papers)**

Unless a different form of caption is specified by Maryland Rules, all papers filed with the court or Register shall be appropriately captioned as follows:

**IN THE ORPHANS' COURT**

**(OR)**

**BEFORE THE REGISTER OF WILLS  
FOR**

\_\_\_\_\_, MARYLAND

**IN THE ESTATE :**

**OF \_\_\_\_\_ : ESTATE NO. \_\_\_\_\_**

**: : : : :**

- **Certificate of Service**

A Certificate of Service shall be filed for every paper that is required to be served by the personal representative. If a paper is served by personal delivery or first class mail, the certificate shall be in the following form:

**Certificate of Service**

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, I delivered or mailed, postage prepaid, a copy of the forgoing paper to the following persons:  
(Names and **current** addresses)

\_\_\_\_\_

\_\_\_\_\_  
(Signature)

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## Chapter 6

### The Small Estate

#### A. Opening the Small Estate

The small estate procedure is used when assets in the decedent's name alone or as tenants in common have a value of \$30,000 or less (\$50,000 or less if the surviving spouse is the sole heir or legatee). Although the small estate procedure is more streamlined than the regular estate procedure, a number of forms must still be used to administer the small estate. You may obtain the forms mentioned in this section from the Register of Wills Office of the county where the decedent lived.

*Note: If the decedent died prior to July 1, 2000, consult the Register of Wills to determine if you should proceed with a regular estate or a small estate, since the value of each type estate and the method used for valuing them are determined by the date of death of the decedent.*

If the decedent died on or after January 1, 1998, the "value" is determined by the fair market value of property, less debts of record secured by the property, as of the date of death, to the extent that insurance benefits are *not* payable to the lien holder or secured party for the secured debt.

*Note: When valuing real and leasehold property for decedents dying on or after January 1, 1998, instead of an appraisal, you can use the full cash value for property tax assessment purposes, as of the most recent date of finality. (This valuation method cannot be used for farmland, woodland, or national registry land.)*

#### 1. Preliminary Forms: Small Estate Petition for Administration and Schedule B, List of Interested Persons

As personal representative, you officially start this procedure by filing the Small Estate Petition for Administration and Schedule B. They include the following information:

- the domicile of the decedent;
- the name(s) of the person(s) applying to serve as personal representative(s);
- whether the decedent died with or without a will (if the decedent had a will, an original will must be included with the Petition);
- a list of the decedent's property (real and personal);
- a list of known creditors; and
- an attached List of Interested Persons.

You must submit the List of Interested Persons at the same time as the Small Estate Petition for Administration. The List of Interested Persons includes the name, address, and relationship to the decedent of all persons named in the will as legatees, as well as all of the decedent's heirs (surviving spouse, children, and other persons who would inherit if there were no will), *even if they are not named in the will*, and, if the decedent died with a will, the personal representative named in the will. If the decedent had no will, only the decedent's heirs must be listed. (See chart included in Chapter 9, Distribution.)

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## **B. Administration of the Small Estate**

### **1. Responsibility of the Personal Representative**

As personal representative, you hold an extremely important office and have the fiduciary responsibility of insuring that the estate is properly administered. Make absolutely sure that estate property is separate from your own property. *You should open an estate bank account through which all estate business is conducted.*

You are also obligated to keep receipts and accurate records of all estate expenses and payments. You also have a duty to notify the Register of Wills of any additional assets discovered after you opened the estate. Your records are subject to review by the Register and the court.

You are not entitled to receive a personal representative's commission in a small estate proceeding, and attorney's fees cannot be paid without prior Orphans' Court approval unless you qualify for the provisions under Chapter 5 (B-S-b).

### **2. Proceedings after Petition; Posting a Bond in Certain Small Estates**

If the decedent did not name a personal representative in the will, or if there is no will, the Maryland laws set forth an order of priority of who is entitled to serve as personal representative. Generally, the order of priority progresses from family members such as the spouse, children, grandchildren, parents, etc., to creditors or any other Person.

Maryland law excludes certain people from serving as personal representative

even if they fall in the order of priority. Some persons excluded are as follows:

- a person under eighteen;
- a mentally incompetent person;
- a person convicted of a serious crime;
- a person who is not a citizen of the United States (unless the person is the spouse of the decedent and a permanent resident of the United States);
- a nonresident of this State, unless there is on file with the Register of Wills an irrevocable designation of a person who resides in Maryland on whom service can be made. (This form does *not* authorize a resident agent to act on behalf of the personal representative.)

Once the Register of Wills determines that the Small Estate Petition for Administration is accurate, the Register appoints you as personal representative, issues Letters of Administration, and signs the Order to administer the estate as a small estate.

The Order for Small Estate directs you to pay the fees due the Register, the expenses of administration, the allowable funeral expenses, and the statutory family allowances. If necessary, you will be required to sell estate assets to satisfy these payments.

Unless a bond is expressly excused by will or the written waiver of all interested persons, the personal representative will be required to post a bond if, after the payment of expenses and the funeral and family allowances, the remaining assets of the estate have a gross value of \$10,000 or more.

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### 3. Publication of Notice of Appointment

If assets remain after you pay the fees due the Register, expenses of administration, allowable funeral expenses, and statutory family allowances, the Register admits the will to probate and places the Notice of Appointment of the personal representative in a local newspaper of general circulation that you select. At the expense of the estate, the Register will send by certified mail, return receipt requested, a copy of the Notice of Appointment to each person listed on the List of Interested Persons. The Notice states that the estate is being administered as a small estate, announces your name as personal representative, and instructs those who object to your appointment to file an objections with the Register of Wills within thirty days.

### 4. Actual Notice to Creditors and Payment of Claims

The Notice of Appointment also serves as a Notice to Creditors who may have claims against the decedent. *You must make a reasonably diligent effort to find the name and address of each creditor.* In addition, you must deliver or mail (by first class mail, postage prepaid) a copy of the Notice of Appointment to *all* known creditors of the decedent.

According to the Notice, creditors are required to file any claim with you as personal representative, or with the Register of Wills, up to six months after the decedent's death, or up to thirty days after you send the creditor the published Notice of Appointment. You must either

pay the claim, or disallow the claim (in full or partially) on the prescribed form.

### 5. Information Report

The Information Report must be filed with the Register of Wills within three months after your appointment as personal representative, and may be filed at the time of your appointment. For decedents who die on or after July 1, 2000, it is only necessary to report and value property passing to someone subject to inheritance tax. (See Chapter 9, Inheritance Tax.) Otherwise, the valuation requirements are the same as those for the Inventory and Information Report in a regular estate. [See Regular Estate, Chapter 3 (B-3,4).]

The Information Report includes:

- jointly held property;
- any transfer of a material part of the decedent's property within two years of death that was in the nature of a final disposition (including property placed in a joint tenancy, trust, or joint bank account);
- any property over which the decedent retained an interest such as a retained life estate in a deed or a trust, whether the trust is revocable or irrevocable;
- joint or P.O.D. bank accounts and U.S. Savings Bonds;
- any interest in a public or private pension or benefit plan, including any I.R.A.;
- any interest less than absolute in real or personal property such as a life estate or interest in a trust; or
- any real property owned by the decedent located outside of Maryland.



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## C. Closing the Small Estate

*You are under a duty to use the decedent's assets to pay his debts, even if paying them means the estate becomes insolvent.* (If you think the estate will be insolvent, you must follow the guidelines set out in Maryland law as to the order in which you can pay the debts.) If you were required to publish a Notice and you have assets remaining after the payment of all allowable claims, you will distribute the remaining assets as directed by the decedent's will, or by the Maryland laws of intestacy, if there was no will.

You must submit the Small Estate Certificate of Compliance to the Register of Wills within sixty days after the deadline for filing claims; for example, the earlier of six months from the date of death of the decedent or thirty days after a creditor is given actual 'notice.

The Certificate of Compliance shows proof of the newspaper notice, states that all claims against the estate have been paid, and states that distribution of assets has occurred or will occur within thirty days after the Certificate of Compliance is filed. You must sign the Certificate of Compliance under the penalty of perjury. If distribution has not yet occurred when you file the Certificate of Compliance, or will not occur within thirty days, you must file a supplemental Certificate of Compliance every thirty days until final distribution is made and the estate is closed.

## D. Conversion from a Small Estate to a Regular Estate

If a small estate has been opened and property is later discovered which increases the value of the estate to more than \$30,000 (\$50,000 if the sole heir or legatee is the surviving spouse), you must notify the Register of Wills of the additional assets, discontinue administering the small estate, and file a Petition for Probate requesting administration of the decedent's estate to proceed under a regular estate. (See Chapter 5, The Regular estate.)

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## Chapter 7

### Modified Administration

(for decedents dying on or after October 1, 1997)

**M**odified administration is a streamlined procedure available to a limited group of residuary beneficiaries within three months after the estate is opened. The procedures for opening an estate are the same whether you use the small estate, regular estate, or modified administration. *In modified administration, you should open an estate bank account through which all estate business is conducted.*

#### A. When Is Modified Administration Available?

Modified administration can be used when the residuary takers (the legatees of a testate decedent or the heirs-at-law of an intestate decedent) are limited to the personal representative, surviving spouse, and children. If other individuals are residuary takers, modified administration is not available.

#### B. Election and Consent to Modified Administration

The personal representative must file an Election for Modified Administration within three months of the date of the appointment as personal representative. All residuary takers must consent to the Election for Modified Administration. The consent form must be filed prior to, or with the election. If the election is filed after three months from the date of appointment, modified administration is not available.

#### C. Extensions

No extensions can be granted by the Register of Wills or Orphans' Court in modified administration.

#### D. No Inventory or Account Filed

You are not required to file an inventory and account with the Register. However, if an interested person asks you for an inventory or account, you must provide them a formal inventory or account. You must keep accurate records of all expenses and payments, so that you can provide the inventory or account upon request.

#### E. Final Report

In modified administration, the personal representative is not required, to file a formal inventory or account. Instead, you are **required** to file a Final Report within ten months from date of appointment and to distribute the property no later than twelve months from the date of appointment. The Final Report lists the assets of the decedent as of date of death, reports administration expenses, distribution, and inheritance tax.

#### F. Revocation

Interested persons can object to the continuation of modified administration by filing a written objection with the Register of Wills. The Register will then send a notice of revocation to all interested persons. Once modified administration is revoked, the estate proceeds under administrative probate and cannot return to modified administration.

#### G. Probate Fee; Inheritance Tax

The probate fee and inheritance tax, if any, are due at the time the Final Report is filed. The probate fee is based on the gross value of the assets reported on the Final Report. (See Chapter 8 to determine if inheritance tax is due and Chapter 10, Fees.)

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## Chapter 8

### Inheritance Tax

**P**roperty passing from a decedent is subject to Maryland inheritance tax unless it qualifies for an exemption. The same rate of tax applies whether the decedent died with or without a will. Both probate and non-probate property are subject to the tax. However, no inheritance tax is collected on property administered under a small estate. (See Chapter 6.)

#### A. Maryland Inheritance Tax

For decedents dying on or after July 1, 2000, the inheritance tax has been repealed *if the property of the decedent passes to:*

- a grandparent of the decedent;
- a parent of the decedent;
- a spouse of the decedent;
- a child or other lineal descendant of the decedent;
- a spouse of a child or other lineal descendant of the decedent;
- a stepparent or stepchild of decedent;
- a brother or sister of the decedent; or
- a corporation if all of its stockholders consist of the surviving spouse, parents, stepparents, stepchildren, brothers, sisters, and lineal descendants of the decedent and spouses of the lineal descendants.

The inheritance tax (known as collateral tax) applies *if property of the decedent passes to* anyone not exempt from the tax such as a niece, nephew, cousin, aunt, uncle, step-grandchild, friend, or non-exempt organization.

The inheritance tax does not apply to property that passes from a decedent to any one person so long as the total value

does not exceed \$1,000.

No inheritance tax applies to a bequest left under a will to a charitable organization as defined by the State of Maryland.

*Note: Contact the Register of Wills Office to determine the tax rate in effect for decedents dying prior to July 1, 2000.*

#### B. Property Subject to Tax

All property passing at the death of any resident or nonresident decedent is subject to inheritance tax, unless the law provides an exemption. The tax applies to property that passes by will or under the intestate laws of Maryland, whether the property passes outright or in trust. The inheritance tax applies to the following:

- all property owned by the decedent in his or her name alone or as tenants in common;
- an interest as joint tenant;
- an interest less than absolute such as a life estate or remainder interest;
- any transfer of a material part of the decedent's property within two years of death (including property placed in a trust or joint tenancy such as a joint bank account);
- a transfer made in contemplation of death;
- a transfer in which the decedent retained any ownership such as a retained life estate; or
- any property over which the decedent retained an interest such as a retained life estate in a deed or revocable or irrevocable trust.

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## C. Payment of Inheritance Tax

The Register of Wills determines the amount of inheritance taxes owed to the State of Maryland on probate and non-probate property.

### 1. Probate Property

The inheritance tax is due on probate property when you, as personal representative, account for distribution of the property to someone subject to tax. This includes property held in the decedent's name alone and property held as tenants in common.

### 2. Non-Probate Property

For tax purposes, if property is passing to someone not exempt from the tax, non-probate property is assessed, after the Information Report and/or Application to Fix Inheritance Tax on Non—Probate Assets forms, together with the required valuation, are submitted. [See Chapter 5, (B-4), Information Report.] Non-probate property is valued as of the date of death. You should provide evidence of the date of death balances and of any outstanding liens or encumbrances such as a mortgage, as well as the full name, address, and relationship to the decedent of each recipient.

Every personal representative must report the non-probate assets within three months of the date of appointment. If no personal representative has been appointed, or if there are non-probate assets passing at death of which the personal representative is not aware, then it is the duty of any distributor or recipient of non-probate property to file the Application to Fix Inheritance Tax on Non-Probate Assets if it is subject to tax. A distributor and recipient

include a trustee, surviving joint owner, and beneficiary of an annuity or pension plan.

If the decedent had an interest in a trust, the following must be provided:

- copy of the trust;
- names and addresses of trustees or substitute trustees;
- list of the assets valued as of the date of death;
- evidence of mortgage balance on any real estate;
- list of all expenses to be paid from the trust (to be provided only if the trust permits the payment of expenses);
- date of birth of all life tenants;
- the relationship of all beneficiaries to the decedent.

***Note:** Contact the Register of Wills Office to determine the tax rates in effect for decedents dying prior to July 1, 2000.*

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## Chapter 9

### Distribution

**I**f the decedent had a will, you must distribute the property as the will defines. (Challenges to the will and judicial probate are beyond the scope of this booklet.)

The surviving spouse and each unmarried child of the decedent who had not attained the age of eighteen years at the time of the death of the decedent are entitled to receive a family allowance, as specified by law.

In addition, a surviving spouse has the right to renounce the will and elect to take a statutory share instead. He or she may take a one-third share of the net estate if there is also surviving issue, or a one-half share of the net estate if there is no surviving issue. (Specific time limitations apply to the spousal election and anyone considering it may wish to consult an attorney.)

When a decedent dies without a will (intestate), the net estate is divided among the decedent's heirs (next of kin) under the law of intestacy. The following chart demonstrates intestate distribution in Maryland.

To use the chart, start at category 1 and go down the chart until you locate the first appropriate category. As soon as you have found the correct number, stop. For example, suppose the decedent was survived by a spouse but had no living children or parents. Use category 5 of the chart, which indicates that the spouse inherits the entire net estate. In a second example, suppose the decedent was survived by a spouse and brother but no living children or parents. Category 5 of the chart would still apply. Keep in mind that "children" does not include a stepchild. Stepchildren are listed in category 10.

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**If the Decedent is Survived by:**

1. **a spouse and minor children** (does not include stepchildren) —spouse receives one-half, minor children share remaining one-half;
2. **a spouse and all adult children** (not including stepchildren) —spouse receives \$15,000 plus one-half of remaining estate, adult children divide the remaining share of the estate (the interest of a predeceased child passes to issue of that child);
3. **children only** — children (does not include stepchildren) divide estate equally;
4. **a spouse and parents** — spouse receives \$15,000 plus one-half of remaining estate, both parents divide the balance or surviving parent receives the balance;
5. **a spouse without other heirs listed above** — entire estate passes to spouse;
6. **parents without heirs listed above** — both parents divide entire estate or surviving parent takes all;
7. **brothers and/or sisters without other heirs listed above** — brothers and/or sisters divide estate equally (share of a deceased sibling goes to his or her issue—nieces and nephews of the decedent);
8. **grandparents without other heirs listed above**— grandparent(s) divide entire estate or, if grandparents are deceased, to issue of the grandparents;
9. **great-grandparents without other heirs listed above** — great-grandparent(s) divide entire estate or, if great-grandparents are deceased, to issue of the great-grandparents;
10. **stepchildren will share the estate if there are no other heirs as listed above; or**
11. **no living heirs or stepchildren** — the estate will pass to the Board of Education, or to the Department of Health and Mental Hygiene if the decedent was a recipient of long-term care benefits under Maryland Medical Assistance Program

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## Chapter 10

### Fees

**A** probate fee is assessed for the work involved in the probate of an estate as set forth in the schedule below. In addition to the fees listed below, you should be aware that there may be additional charges for services and/or requirements to the Register such as entering a claim, filing a caveat, extra copies of a Letter of Administration, etc.

<b>Value of the probate Estate Is at Least</b>	<b>But Less Than</b>	<b>The Fee Is</b>
\$ 0	\$ 200	\$ 2
\$ 200	\$ 5,000	1% of the value of the small estate
\$ 5,000	\$ 10,000	\$ 50
\$ 10,000	\$ 20,000	\$ 100
\$ 20,000	\$ 50,000	\$ 150
\$ 50,000	\$ 75,000	\$ 200
\$ 75,000	\$ 100,000	\$ 300
\$ 100,000	\$ 250,000	\$ 400
\$ 250,000	\$ 500,000	\$ 500
\$ 500,000	\$ 750,000	\$ 750
\$ 750,000	\$ 1,000,000	\$ 1,000
\$ 1,000,000	\$ 2,000,000	\$ 1,500
\$ 2,000,000	\$ 5,000,000	\$ 2,500
\$ 5,000,000	— — —	\$ 2,500 plus .02% of excess over \$ 5,000,000

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## Chapter 11

### Definitions

**ADMINISTRATION OF AN ESTATE** — the process by which a decedent's assets are collected, managed and distributed to those entitled to them.

**ADMINISTRATIVE PROBATE** — the one proceeding started when a person files a Petition for Probate (for a regular estate) or Petition for Administration (for a small estate) with the Register of Wills. The purpose of probate is to appoint the personal representative, collect the decedent's property, pay the decedent's debts and death taxes, and distribute the remaining property as specified in the will or, if no will, by the intestate law of distribution,

**CHILD AND CHILDREN** — child includes a legitimate child, an adopted child, and an illegitimate child to the extent provided for by Maryland law. A child does *not* include a stepchild, a foster child, a grandchild, or a more remote descendant.

**CLAIMANT** — a person filing a claim against the decedent's estate.

**COLLATERAL TAX RATE** — inheritance tax which applies to those individuals who are not taxed at the lineal rate: aunt, uncle, niece, nephew, cousin, step- grandchild, all other relatives, and anyone who is not a relative of the decedent.

**DEBT OF RECORD** — a debt of record is a recorded debt. An example is a mortgage highest recorded in the land records.

**DECEDENT** — a person no longer living,

**DESCENDANTS** — child, grandchild, great-grandchild, etc. of the decedent.

**DOMICILE** — the place where a person has his or her true, fixed, permanent home or principal residence without any intention of moving to another place. A person may have more than one residence but only one domicile.

**ELECTION AGAINST THE WILL** — a right given by law to the surviving spouse to a statutory share of a decedent's estate whether or not the decedent provides for a share in the will. This right allows the spouse to elect against the will, even if spouse was not named in the will. Also called an elective share.

**ENCUMBRANCE** — a lien or claim on property; for example, a mortgage.

**ESTATE** — property of a decedent regardless of whether the decedent had a will.

**FAMILY ALLOWANCE** — in addition to property passing under the will or by intestate succession, the surviving spouse and each unmarried child of the decedent who was not eighteen years at the time of the death of the decedent are entitled to receive a family allowance as specified by Maryland law. The family allowance is subject to the Maryland inheritance tax.

**FIDUCIARY DUTY** — an obligation which imposes fairness, good conscience and of self-dealing on a person appointed to certain positions such as a personal representative of an estate. It is the standard of care that the law recognizes imposes substantial personal liability to the fiduciary if he or she fails to meet the standard of duty.



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**GROSS ESTATE** — the value of the estate assets *without* deducting outstanding liens or debts.

**HEIR** — a family member who inherits from a decedent who dies without a will.

**INFORMATION REPORT** — the document that lists all of the decedent's non-probate property; for example, property that passes by operation of law such as a jointly held property, a life estate or remainder interest in a trust or deed, a revocable or irrevocable trust in which the decedent had an interest, a joint or P.O.D. bank account or a pension or benefit plan, including an I.R.A.

**INHERITANCE TAX** — a tax imposed on the right to receive probate or non-probate property from a decedent unless exempted by law from tax. The rate of tax is determined by the date of death of the decedent.

<sup>6</sup>**INTERESTED PERSON** — the person named as the personal representative in a will, the person serving as personal representative, a legatee, an heir (even if the decedent had a will), and the trustee of a trust created by the decedent in the will.

**INTESTATE/INTESTACY** — dying without a will.

**ISSUE** — children, grandchildren, great-grandchildren, adopted children, and other lineal descendants (whether or not a minor). "Issue" does *not* include stepchildren or foster children.

**JOINT TENANTS WITH RIGHT OF SURVIVORSHIP** — type of ownership of real or personal property by two or more persons in which, upon the death of one of the joint tenants, the remaining tenant

receives the deceased tenant's share by right of survivorship. It is possible for individuals to own property in joint tenancy regardless of the blood relationship between them. Common types of jointly owned property are real property, savings bonds, and bank accounts. (Compare with "tenants by the entireties" and "tenants in common" listed below.)

**JUDICIAL PROBATE** — a proceeding conducted by the Orphans' Court when matters cannot be handled administratively. For example, when the validity of the will is at issue, or the will is lost, stolen or damaged.

**LEGATEE** — a person named in a will to inherit.

**LINEAL TAX RATE** — those individuals taxed at the lower inheritance tax rate: children, parents, grandparents, grandchildren, stepchildren, or stepparents. The lineal rate has been repealed for decedents dying on or after July 1, 2000.

**LETTERS OF ADMINISTRATION OR LETTERS OF APPOINTMENT** — an official document which authorizes a personal representative to administer a decedent's estate.

**MODIFIED ADMINISTRATION** — a procedure available when the residuary estate consists only of the personal representative, spouse or children. Instead of an Inventory or Account, a Final Report must be filed within ten months of appointment. *Only available for decedents dying on or after January 1, 1998.*

**NET ESTATE** — the property remaining after the payment of the family allowances, expenses, and enforceable claims.

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**NON-PROBATE ESTATE** — property of the decedent which passes by operation of law such as a joint tenancy, tenants by the entirety, or property passing under a deed or a revocable or irrevocable trust. Non-probate property must be reported to the Register of Wills on the Information Report.

**OPENING THE ESTATE** — starting the probate procedure by filing a Petition for Probate (regular estate) or Petition for Administration (Small Estate) requesting appointment of the personal representative by the Register of Wills (administrative probate) or the Orphans' Court (judicial probate).

**PERSONAL REPRESENTATIVE** — the person appointed by the Register of Wills or Orphans' Court to administer the estate (formerly known as the executor or administrator).

**PETITION FOR PROBATE/PETITION FOR ADMINISTRATION** — a probate proceeding is started by filing this petition. **PROBATE** — see “administrative probate”.

**PROBATE ESTATE** — the property of the decedent owned individually or as tenants in common.

**REGULAR ESTATE** — when the value of the decedent's assets to be probated exceeds the limits for a small estate. A determination of whether you have a regular estate *depends on the date of death*. For decedents who died on or after July 1, 2000, assets in excess of \$30,000 (\$50,000 if the spouse is the sole legatee or heir) must be administered as a regular estate. The Register of Wills can assist you in determining which procedure to use.

**SMALL ESTATE** — A determination of whether you have a small estate *depends on the date of death*. For decedents who died on or after July 1, 2000, the assets subject to administration must have a value of \$30,000 or less (\$50,000 or less if the spouse is the sole legatee or heir). (If the decedent died before January 1, 1998, gross value applies.) The Register of Wills can assist you in determining which procedure to use.

**TENANTS BY THE ENTIRETIES** — a special form of joint ownership of property which can only be held between husband and wife. At the death of one, the property automatically passes to the surviving spouse with no inheritance tax due.

**TENANTS IN COMMON** — two or more persons having an interest in the same piece of property. Legally, each person has a separate and distinct ownership interest, with each owning an individual share of the property. On death, the part owned by the deceased passes in accordance with the decedent's will or the laws of intestacy.

**TESTATE** — dying with a will.

**TESTATOR** — a male who makes a will.

**TESTATRIX** — a female who makes a will.

**VALUE** — for decedents dying on or after January 1, 1998, the value of a small estate is determined by the fair market value, less debts of record secured by the property, if insurance benefits are not payable to the lien holder or secured party for the secured debt. An example is mortgage insurance.

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## Chapter 12

# Important Dates to Remember for Personal Representative

### A. Regular Estate

1. If the decedent had a will, file the will with the Register of Wills as soon as possible after the decedent's death.
2. Promptly file the Petition for Probate and the Notice of Appointment in duplicate.
3. File the list of Interested Persons either with the Petition for Probate or within twenty days after the filing of the petition for Probate.
4. Within three months after your appointment, file both the Inventory and Information Reports.
5. File the Application to Fix Inheritance form within ninety days of the decedent's death.
6. File the first account with nine months from the date of your appointment as personal representative.
7. If the account is not a final account, you must file a subsequent account at intervals of the first to occur of (a) six months after the prior account is approved by the Orphans' Court; or (b) nine months after the prior account is filed, until the close of the estate.

### B. Small Estate

1. If the decedent had a will, file the will with the Register of Wills as soon as possible after the decedent's death.
2. Promptly file the Small Estate Petition for Administration.
3. If assets remain after the funeral expenses, family allowances, and Register's fees, file the Notice of Appointment.
4. After the deadline for filing claims, you have sixty days to file the Small Estate Certificate of Compliance.
5. If you have not distributed the property before the Certificate of Compliance is filed, file a supplemental Certificate of Compliance every thirty days until final distribution is made and the estate is closed.

### C. Modified Administration

1. Within three months of appointment, the election and consents must be filed.
2. Within ten months of appointment, you must file the Final Report with the Register of Wills.
3. Inheritance tax, if applicable, and probate fee are due at the time the Final Report is filed.
4. No later than twelve months after date of appointment, distribution must be made.

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***Words of Caution!***

***Only the most basic forms have been discussed in this booklet. Important legal rights may be lost if the administration of the estate is not properly conducted. It may be advisable to seek legal advice about any question that arises as you administer an estate.***

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