



800 North French Street, 2nd Floor
Louis L. Redding City/County Bldg.
Wilmington, DE 19801

Phone 302-395-7800
Fax 302-395-7801
www.nccde.org/wills

Ciro Poppiti, III **Register of Wills**

Hours: Monday through Friday, 8:30am to 4:45pm, closed from 12:00-1:00pm.

STEPS FOR PROBATING AN ESTATE

1. Filing and Proving the Will (if the decedent had a will)

State law requires that the will of a decedent be filed with the Register of Wills in the county where the decedent was domiciled. The will needs to be proven if it is not a "self-proven" document. For a will to be self-proven, after the testator and the witnesses have signed, an additional page is attached that is an affidavit which is signed by all again, and then notarized. If the will has this affidavit it may be considered self-proven. If it does not, then the two witnesses to the will must come to the Register of Wills Office to take an oath that they witnessed the decedent sign the will. If the witnesses are deceased or unavailable, two other people familiar with the handwriting of the witnesses may come to the Register of Wills Office to take an oath as to the signature(s) on the will. If the witnesses' signatures cannot be proven, then two disinterested individuals can prove the decedent's signature. A disinterested individual is someone who does not benefit from the will. The fee charged to the estate will be \$5.00 per witness.

2. Opening the Estate

Present a prepared petition requesting appointment as the executor/administrator or "personal representative" of the estate and file a certified copy of the death certificate, if it has not already been filed. The petition asks for a list of the decedent's next of kin and an approximate value of any solely held real estate and personal possessions the decedent had at the time of their death. Under next of kin, please remember that what is being requested is a list of relations, not just beneficiaries. Even if there was no personal relationship existed at the time of the decedent's death, if a person qualifies as next of kin (surviving spouse, children, parents, siblings, etc.) their name and address must be included. Based on the information regarding the assets provided in the petition, an opening fee is paid to the Register of Wills. Please see the attached fee list to determine the approximate opening costs of the estate you are opening. At the time of the opening is also when "Short Certificates" are granted to the Personal Representative. These are papers that allow the personal representative to conduct business on behalf of the estate. They grant the personal representative the right to take possession of the decedent's solely held assets (excluding real estate) for the purposes of probating the estate. Please note there is a fee for missed appointments.

3. Inventory

Within three months after the granting of letters (the date the estate is opened), an Inventory Form 600 W is to be filed with this office. The inventory is a list of the assets of the estate that have been gathered by the personal representative during the three months prior. The inventory will be audited and if errors are discovered, the personal representative will be contacted within a few days. On the inventory, the personal representative must list the assets, both personal and real estate, on the proper schedule pages (see Sample Inventory Form 600W), and the value of those assets at the time of death. Also to be included is the name, address, relationship and share of the person(s) who inherited the real estate when the owner died as well as the tax parcel number of the property. Overdue documents will be charged a late fee. In addition, there is a penalty for the third returned inventory. The fee to file the Inventory is \$15.00, which is pre-paid with the opening costs. There is a fee of \$1.00 per page for submitting additional pages with the Inventory. Note: The Inventory form should not be submitted to the deputy. The Inventory form should be submitted to the Register of Wills Accounting department. If you visit the Register of Wills office, the Accounting department will audit the Inventory and notarize it for you for no additional cost. No appointment is required for this service. However, you may sign the Inventory in front of any notary and mail it in if you prefer.

4. **State of Delaware, Division of Revenue Estate Tax (302) 577-8170**

As of 1/1/99, there is no Delaware inheritance tax or requirement to file an inheritance tax return. For more information, contact the Division of Revenue or a tax advisor.

Deaths occurring on or after 7/1/2009:

If no Delaware estate tax is due, an Affidavit That No Delaware Estate Tax Return is Required must be filed with the Register of Wills. The filing fee for the affidavit is \$10.00.

Deaths occurring between 1/1/2005 and 6/30/2009:

No documents required to be filed with the Register of Wills office related to Estate Taxes.

Deaths occurring between 1/1/1999 and 12/31/2004:

If no Delaware estate tax is due, an Affidavit That No Delaware Estate Tax Return is Required must be filed with the Register of Wills. The filing fee for the affidavit is \$10.00.

5. **The Accounting**

The next filing requirement with the Register of Wills is the accounting. It is to be filed within one year of opening the estate. Overdue documents will be charged a late fee. An accounting begins with the total value of the decedent's solely owned personal assets as stated on the inventory ("total of probate assets") and any additional amount which may have come into the estate since the inventory was filed. On the second page, deductions for administrative costs, debts, funeral expenses, and personal representative and attorney's fees are listed. All expenses should be identified individually and the amount paid shown.

If the decedent's real estate is sold under the direction of the will or by court order, the net proceeds are to be included under the additional assets section of the accounting. A copy of the settlement sheet must be attached to the accounting.

To compute the closing costs, add all the deductions on page 2 down through commissions taken. (To assist in determining attorney's fees and commissions, please refer to Chancery Court Rule 192.) Subtract total deductions from the total assets shown on page 1. The difference is known as the "net personal estate." The Closing costs are then determined by taking 1.75% of the net personal estate plus \$20.00 for the recording and indexing and \$5.00 for each release that you wish to file with the Register of Wills. To arrive at the total amount disbursed, add total closing costs to the deductions. Subtract total amount disbursed from the total assets on page 1. This balance is the "Balance Remaining in the Hands of the Personal Representative Due the Estate."

The following forms need to be filed with the accounting:

Form N.C. 5 – List of Beneficiaries. For every beneficiary listed on this form, one of the following forms must also be filed:

- **Form N.C. 1** – Notice to each Beneficiary that the accounting is open for inspection for 3 months
- **Form N.C. 2** – Waiver from each beneficiary relinquishing their right to contest the accounting and receive notices that an accounting has been filed.
- **Form N.C. 3** – Waiver used if beneficiary is legally incapacitated.

If the voluntary waiver form N.C. 2 cannot be obtained from a beneficiary, then prepare Form N.C. 1 and a stamped envelope addressed to the beneficiary and present these to the Register of Wills office for mailing.

Submit the account to the deputy. At this time, you will also need to submit a cancelled check or receipts evidencing payment for every debt and expense (deductions) listed on the accounting. The deputy will audit the account and you will be notified that it has been approved or if corrections are necessary. This process will take at least 10 business days. You may verify that the account has been received by the deputy by checking the Wills Search on our website, www.nccde.org/wills.

6. **Closing the Estate**

After the accounting has been audited and approved, the deputy will contact you to schedule an appointment to close the estate. At the closing, the personal representative will be administered an oath, sign the affidavit and must present a check or cash for the total closing costs. Please note there is a fee for missed appointments.