

# Probate Guide



*A guide for clerks  
serving courts with  
probate jurisdiction*

September 2012



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## PREFACE

This 2012 Probate Guide has evolved from the former Probate Manual which was first published in 1975, and was revised in 1977, 1981, 1991, 2007 and again in 2012. The 2012 revision was offered to the Tennessee court clerks as a guide, including clerks and masters in most counties, whose court had probate jurisdiction. We have attempted to update this guide to reflect the most current changes in the probate code section. However, this guide is not a definitive study of the law of decedent's estates. References to Tennessee Code Annotated section numbers are placed in appropriate places (in parentheses) throughout this guide to aid the user in finding relevant code sections. Case law is sometimes cited, but no attempt was made to provide detailed case law analysis. Further, the user of this guide should remember that statutory law and case law in this area is constantly evolving, so statements made in this guide must be verified before being relied upon, particularly in the years after 2012 until the current date.

The basic format of this guide is to explain the life cycle of an administration of a decedent's estate, whether testate or intestate. Although much of probate procedure is informal, it often involves a specialized vocabulary. For this reason, a glossary of terms often used in probate proceedings is included. Also attached to this guide are examples of various forms used in the probate court.

The 2012 Probate Guide is provided by the Probate Committee of the Tennessee Clerks of Court Conference.

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# CHAPTER ONE

## INTRODUCTION

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### The Probate Court

The jurisdiction over the probate of wills and administration of estates is now vested in the chancery court unless a particular county has a special court for probate created by private act. See T.C.A. 16-16-201. Probate jurisdiction has been vested in General Sessions Court in several counties by private act. Under this law, where the chancery court exercises primary jurisdiction of probate matters, the clerk and master may perform many of the functions formerly reserved to the county judge, subject to the review and approval of the chancellor, as well as those duties formerly performed by the county clerk when acting as clerk of the probate court for a county judge or probate judge. Therefore, when the term “clerk” is used hereafter, it shall refer to the county clerk, clerk and master, probate clerk or any clerk exercising probate jurisdiction. However, because of the additional duties placed on the clerk and master when the chancery court exercises probate jurisdiction, specific reference to the clerk and master will often be necessary. Similarly, the term “judge” shall refer to judges having probate jurisdiction. The term “court” shall refer to the court exercising probate jurisdiction.

As noted earlier, the clerk and master may perform some duties for the chancellor that other clerks could not perform for the county judge. Where the chancery court has probate jurisdiction, the clerk and master may “grant letters of administration and letters testamentary . . ., appoint administrators and executors . . ., receive and adjudicate all claims, probate wills in common form, determine allowances to the surviving spouse and family of the deceased, preside over the assignment of homestead, take and state all accounts and settlements, subject to the approval of the chancellor, direct and approve final distributions, and hear and determine all probate matters whether herein enumerated or not.” (T.C.A. 16-16-201)

The court exercising probate jurisdiction of the county in which the decedent usually resided (was domiciled) at the time of his or her death has jurisdiction over the estate. However, if the deceased had fixed residences in more than one county in Tennessee, then either county’s court exercising probate jurisdiction has jurisdiction. (T.C.A. 30-1-102) Also, if the decedent owned real estate situated in another state, then that state will have ancillary jurisdiction to administer that state’s real estate. A finding of domicile by the probate court of one state is not binding upon the courts of another state, and each court finding domicile in that court’s state may administer the real and personal property within its own state.

Letters testamentary or of administration may be granted upon the estate of a person who resided, at the time of his death, in some other state or territory of the union, or in a foreign country, by the probate court of any county in this state:

1. Where the deceased had any goods, chattels, or assets, or any estate, real or personal, at the time of his death, or where the same may be at the time when said letters are

- applied for;
2. Where any debtor of the deceased resides;
  3. Where any debtor of a debtor of the deceased resides, his debt being unpaid when the application is made;
  4. Where any suit is to be brought, prosecuted, or defended, in which said estate is interested. (T.C.A. 30-1-103)

### **Overview of the Testate and Intestate Estate**

Upon the death of a person, the real and personal property of the decedent must be distributed according to law. This law is basically the Tennessee statutory law found in Tennessee Code Annotated. When a person has made a valid will before death, then that person is said to have died testate or with a will. When a person dies without having made a valid will, then that person is said to have died intestate or without a will. Sometimes a person dies leaving a will that does not deal with all of the decedent's property. In this case, the person dies intestate in regard to the property not passing by will. This guide will first deal with the situation involving decedents that have left a will, but will also review the procedure involved in intestacy. In many aspects, the administration is similar.

Certainly, many advantages are secured through probate administration, such as clear vesting of legal title where real estate is devised by will. Some estates where the value of property in the estate is under \$25,000.00 may be administered in a shortened manner under the Small Estates Act. (T.C.A. 30-4-101 et seq.) Administration is always necessary if one or more of the heirs is a minor, or if some of the heirs demand administration, or if there is a dispute among the heirs.

### **Sample Guidelines for an Estate:**

1. Determine if the decedent left a will and if so, the original will be needed for probate.
2. Determine if the will is self proving or authenticating, which means it has an affidavit attached to the will that was executed at the same time the will was executed. If the will is not self proving, it will need to be proven by affidavit or testimony of one witness.
3. To open a probate in:
  - a. Common form, you will need a petition that contains all the information outlined in TCA 30-1-117, an order of probate, and the original will.
  - b. Solemn form, you will need a petition that contains all the information outlined in TCA 30-1-117, and a summons/notice that will need to be served on all beneficiaries and/or heirs at law. The Clerk should file and issue the documents and set this for a court hearing. Following the hearing an order should be entered detailing the outcome of the hearing for probate in solemn form.
4. The clerk is required to send a notice to the Commissioner of Revenue, issue Letters of Testamentary with a will and Letters of Administration without a will. (If a request is

made to probate a will contrary to the specific directions in the will, the Clerk should issue Letters of Administration CTA, or with the will annexed, and Notice to Creditors. The clerk should collect the filing fee at the initiation of the estate. If bond is required, it should be received prior to the issuance of Letters.

5. File all documents relative to that estate until closure is ready. The clerk may request an affidavit from the representative or the attorney representing the estate, stating that actual notice to creditors has been given to all known creditors and the date received by such creditor, so that the clerk will know when an estate can be closed.
6. Closing documents required are:
  - a. receipt/certificate from the Department of Revenue;
  - b. release from the Bureau of TennCare on deceased individuals over the age of 55;
  - c. a sworn statement that actual notice to creditors has been given by the personal representative to all known creditors;
  - d. proof that all claims filed against the estate have been satisfied and/or released;
  - e. a release from each beneficiary or heir or in the alternative;
  - f. set the closure for hearing and make sure all heirs or beneficiaries have been notified by the attorney or the representative;
  - g. a detailed accounting, unless waived by the will and/or by all the heirs, which is supported by legal vouchers. Or in the alternative, a motion or petition to close or a statement in lieu of settlement; and
  - h. an order to close the estate.

## CHAPTER TWO

### ADMISSION OF WILL TO PROBATE

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In Tennessee, any person of sound mind eighteen (18) years old or older may make a will in accordance with statutory requirements for validity. (T.C.A. 32-1-102) Strict compliance with the statutory requirements must be shown to a court. These strict requirements help to guard against fraudulent transfer of property by purported will.

The process of proving a will in court is called “probate.” The court which takes the proof is the “probate court.” The person leaving a will is called a “testator.”

When a will is presented to the court, either through a judge or clerk, the person presenting the will may simply produce the document to the judge (or clerk and master) and move that it be admitted to probate. The judge (or clerk and master) then presides over the presentation of the proof and orders admission to, or denial of, probate and grants or denies the application for letters testamentary.

In many cases additional information will be helpful to the judge and the clerk, and a petition may contain other information, (see page 10), and an oath of the truth of the statements in the petition.

#### Time Limitations on Probate

Although there is no time limitation on the probate of wills generally, letters testamentary (or of administration) should not be granted after ten years of the date of the decedent’s death, as these would be considered by the law to be void and of no effect. However, there are three exceptions to this rule:

1. Where a person dies, entitled to a vested or contingent remainder, not reduced to possession in his/her lifetime, for ten years after the termination of the life or other particular/estate on which the remainder depends, letters shall be given to administer upon the estate in said remainder.
2. If a person entitled to distribution was an infant when the deceased died, then, letters may be granted at any time within twenty-two years from the date of death.
3. Also a special administration may be granted for the purpose of prosecuting any claim against the government of the United States without any limitation on time. (T.C.A. 30-1-110)

A nuncupative (oral) will must be submitted for probate within six months after the death of the testator in order to be valid. (T.C.A. 39-1-106)

## Who Presents the Will or Wills

Any “interested person” (see glossary) may present the will for probate. If more than one will exist, both wills should be presented. Corrupt destruction or concealment of a will with intent to prevent probate or to defraud is a felony punishable by imprisonment. (T.C.A. 32-14-131, 40-35-111)

## Renunciation by Devisee

A person who is entitled to take property under a testamentary instrument may renounce in whole or in part the succession to any property or interest passing by the will.

### **Common Form Probate**

No formality is required in proving a will in common form. Usually, the will is presented to the judge, or clerk and master, and motion is made that it be admitted to probate. The clerk will make a minute entry of the motion.

The judge, or clerk and master, will then hear the required proof (see “Sufficiency of the Will” below). No one can object to this proof except by intervening as a contestant (see “Contest” below). The proof must meet the statutory requirements.

If the judge finds the will to be not proved, he denies probate. If he finds it to be proved, he orders it admitted to probate and may order letters testamentary granted if they are applied for (see Chapter Four, Letters and Bond, below).

The personal representative, executor or executrix (see glossary), then administers the estate.

### **Solemn Form Probate**

Solemn form probate will be used where the will is nuncupative in every case, or where the person presenting the will desires to either resolve any possible objections or else desires to force any objectors to make a contest.

Two main differences from common form may be noted:

1. notice and its effect, and;
2. the measure of proof required.

## Notice and Its Effect

In solemn form probate, contest must be offered when the will is offered for probate or never. All persons interested (see glossary) must be notified of the proceedings in order to be bound by it and in order to cut off future contests. If for some reason an interested person is not notified, the proceedings are to him/her as in common form and his/her right to contest is not cut off at a later date.

Notice is by service, or in a proper case, by publication.

### Time of Notice

Resident parties must be served with notice at least five days before offering the will for probate.

Non-residents must be notified by publication and the return-receipt certified or registered mail notice in accordance with statute. (Also see T.C.A. 21-1-204, 21-1-205)

### Other Considerations

A guardian ad litem should usually be appointed for minors and mental incompetents, for often the minor's actual guardian is a party to the proceeding also, and a court appointment of a guardian with no "interest" in the suit will avoid a conflict of interest in the person of the guardian.

Jurisdiction is covered above (See Chapter One, Introduction, The Probate Court).

Sufficiency is covered below (See Sufficiency of the Will).

A will duly probated in another state may be admitted and recorded in any county of this state in which the testator left any estate. (T.C.A. 32-5-101)

When an authenticated copy of a will probated in another state and the probate of such will is presented by the executor or other interested person, these documents must be filed and probate may be had in either common or solemn form. If in solemn form, notice must be given for a hearing at an appointed time as on a petition for original probate of a domestic will in common form. However, a contest of such a will as to its validity shall apply only to a devise of realty lying in Tennessee. Distribution of personal property is according to the probate of the will in the other state. (T.C.A. 32-5-103)

The court's duty is to examine the certifications and authentications. (In re: De Franceschi's Estate, 70 S.W. 2d 513, 17 Tenn. App. 673 (1933)) Proof of certification or authentication shall be sufficient by the attestation of other state's clerk and seal of the court, if a seal exists, together with a certificate of a judge of the court that the attestation is in proper form.

Upon profert of the will or a certified copy and the requirements of law being met to the satisfaction of the probate judge, probate and administration shall be held in the same manner as with all domestic wills including letters, bonds, contest, etc.



## Sufficiency Of The Will

### Common Form

The judge (or clerk and master) should look to the following to see if the will meets the requirements of due execution.

The signature of the testator should be on the will and proved. Unless the will is self-proving, the following question of the witness might be used: “Mr. \_\_\_\_\_, did you and (the other witness) sign this each of you in the presence of the testator and in the presence of each other, and did the testator indicate that this was his/her signature and this document was his/her will?”

- A. For a written will with witnesses. The law requires that a written will (not a holograph-see glossary) be subscribed by at least two witnesses who sign in the presence of each other and in the presence of the testator, and the testator must have indicated in some manner to them that the document was his/her will.

A witness is “interested” if the will gives to him or her some personal and beneficial interest. Unless the will is also attested by two disinterested witnesses, an interested witness can receive no more than he or she would have received had the testator died intestate and forfeits any value in excess of that intestate amount. (T.C.A. 32-1-103)

Unless the will is self-executing (See “Affidavits” below), at least one of the subscribing witnesses, if living, must be produced and examined and if the witness remembers and can testify to all the formalities the law requires for due execution, no other witness need be called. (T.C.A. 32-2-104) But if the witness can only testify as to his/her part of the execution, the other witnesses must be produced if living and within the jurisdiction of the court. If the others be either deceased or beyond the court’s jurisdiction, then their signatures and that of the testator must be proved by persons familiar with the handwriting.

- B. For a holographic will. It need not be dated. Apparently if the will was executed on or before February 15, 1941, the handwriting and signature of the deceased must be proved by at least three witnesses. If executed after that date, then by two witnesses. The signature of the testator need not be at the end of the will although it may be; he/she must have written his/her name as some part of the document.

## Solemn Form

At the time fixed in the notice to parties, all subscribing witnesses to be found should give testimony of due execution as required by law. If more than two have subscribed, then all still should testify.

In the event no subscribing witnesses are to be found, or if the will is a holograph and there are no subscribing witnesses, then diligence is required in the search for the production of such witnesses who may testify; subpoena should issue, inquiry at residence should be made, and relatives and friends questioned as to the witness's present whereabouts. Return of subpoena and in some cases affidavit with questions and answers of inquiries may be then given in evidence. (See "Secondary Proof" below.) If the judge so allows, proof of witnesses residing outside the state or county or unable to testify in person may be taken on interrogatories or deposition.

A nuncupative will must be probated in solemn form. (Brown v. Harris, 68 Tenn. 386, (1876)) It may be made only by a person in imminent peril of death, whether from illness or otherwise, and is valid only if the testator died as a result of the impending peril, and must be:

1. Declared to be his/her will by the testator before two disinterested witnesses.
2. Reduced to writing by or under the direction of one of the witnesses within thirty days after declaration; and
3. Submitted for probate within six months after the death of the testator.

The nuncupative will may dispose of personal property only and to an aggregate value not exceeding \$1,000.00, except that in the case of persons in active military, air or naval service in time of war the aggregate amount may be \$10,000.00. A nuncupative will neither revokes nor changes an existing written will. (T.C.A. 32-1-106)

## Affidavits

In common form probate, a witness to any will may make and sign an affidavit stating therein the facts of due execution which he/she would testify to if in court proving the will. The affidavit must be sworn to before any officer authorized to administer oaths (usually a notary public), and such officer may be in or out of Tennessee. **There should be two witnesses to the signing of the will.**

The request for affidavit may come either from the testator (i.e., when the will is made), the executor, or any person interested under the will (i.e., when the will is offered for probate). (See T.C.A. 32-2-110)

### Secondary Proof

When direct evidence of due execution of a will cannot be obtained, then secondary proof may be admitted.

Proof of the signature of a witness to the will may be made by persons familiar with the handwriting of the witness, and a presumption is then made that the witness signed with due execution.

If proof of one witness's handwriting is unavailable in solemn form, then proof of the signature of one witness and that of the testator is sufficient. If no witness's handwriting can be proved, then proof of the testator's signature by two persons may be sufficient.

### Out-of-State Execution of Will

A will executed outside this state in either:

1. the manner prescribed by the law of this state, or
2. the manner prescribed by the law of the place of its execution, or
3. the manner prescribed by the law of the testator's domicile at the time of its execution,

shall have the same force and effect in this state as if executed in compliance with the execution requirements of this state. (T.C.A. 32-1-107)

If common law or statutes of other states are relied on, the court shall take judicial notice of them. If adverse parties exist, reasonable notice must be given if a party requests the court to take judicial notice of any other types of law. (Tenn. R. Evid. 202)

### Construction of Will

Any court of record having probate jurisdiction has concurrent jurisdiction with chancery court for the construction or interpretation of wills, or parts thereof, and for establishing lost, spoliated, or suppressed wills. (T.C.A. 32-3-109)

The probate judge should admit a will to probate if the sufficiency of the execution is proven. Any relief from uncertainty of meaning must be sought in chancery or any court of record having probate jurisdiction. Any "interested" person may file a suit asking for a judicial construction of the provisions of the will. No breach of duty nor wrong doing need be in question for a construction to be sought.

**All Petitions to Open Estates or Admit Wills to Probate shall include the following, as required by T.C.A. 30-1-117**

- . **The petitioner's name and address.**
- . **The decedent's name, age (if known), date and place of death, and residence address at date of death.**
- . **A copy of the document(s) offered for probate attached as an exhibit to the petition.**
- . **A statement that the decedent died intestate or the date of execution of the document(s) offered for probate (if known) and the names of all attesting witnesses of the document(s) offered for probate.**
- . **If the decedent died intestate, the name, age (if known), mailing address, and relationship of each heir at law.**
- . **If the decedent died testate, the names, relationships, and city of residence of the devisees and legatees and those who would otherwise be entitled to the decedent's property under the laws of intestate succession.**
- . **The identification of any heirs of beneficiaries who are minors or are under a disability.**
- . **Unless bond is waived by the document offered for probate or in writing by all interested parties as authorized by statute, an estimate of the fair market value of the non-real estate assets.**
- . **Whether the document offered for probate waives the filing of any inventory and accounting or whether such is not otherwise required by law.**
- . **A statement that the petitioner is not aware of any instrument revoking any document being offered for probate, and that the petitioner believes the document being offered for probate is the decedent's last will.**
- **The Petition should be sworn to.**

(Note: If the petitioner is unable to truthfully make any statement or if the statement is qualified, a full explanation should be furnished.)

## CHAPTER THREE

### WILL CONTESTS

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Only persons who would be entitled to benefit by sharing in the real or personal estate of the deceased if there were no will, or if a prior will were revived, are entitled to contest the will. It is the person's personal right; it may not be assigned; nor is it necessary that he/she unite with others. The person must show his/her "interest" as if there were no will and thus prove his/her right to contest. However, the clerk has no discretion in accepting a will contest and must file or record whatever notice is given.

#### Jurisdiction

Any court of record that has probate jurisdiction has concurrent jurisdiction with circuit court to try a will contest. (See T.C.A. 32-4-109).

#### Certificate of Contest

The contestant shall, in the notice of contest, elect the trial court the contest will be certified to. (See T.C.A. 32-4-109). (Local rules and practice may apply).

#### Bond

If the right to contest the will is sustained, then the court must require the contestant to enter into a bond in the amount of \$500.00, see T.C.A. 32-4-101(a)(1). If a legatee or devisee be an adult and have notice that the probate is contested, then he/she must give a \$500.00 bond. ( T.C.A. 32-4-102(a)(1)).

If because of poverty, a contestant, devisee, or legatee is unable to bear the expense of the litigation, then he/she may complete the pauper's oath. Pursuant to T.C.A. 20-12-127, the person must be a resident of Tennessee and must complete the Uniform Civil Affidavit of Indigency promulgated in Rule 29, Tennessee Supreme Court Rules.

#### Contest Before Probate In Common Form

When the will is offered for probate, the person desiring to contest makes known his/her desire. The person contesting the will need not have given notice. However, if interested persons were cited into court on a probate in solemn form, the contest must be made known at that time. See Chapter Two.

Pursuant to T.C.A. 32-4-101:

1. Court must enter an order sustaining or denying the right to contest
2. Bonds must be posted
3. Contestant must elect the trial court for the contest

#### Proceedings To Set Aside Probate In Common Form

Pursuant to T.C.A. 32-4-108, “all actions or proceedings to set aside the probate of any will, or petitions to certify a will for an issue of devisavit vel non, must be brought within two (2) years from entry of the order admitting the will to probate, or be forever barred, saving, however, to persons under the age of eighteen (18) years or adjudicated incompetent, at the time the cause of action accrues.”

Pursuant to T.C.A. 32-4-101:

1. Court must enter an order sustaining or denying the right to contest
2. Bonds must be posted
3. Contestant must elect the trial court for the contest

A proceeding to set aside a probate in common form is filed in the form of a complaint, with a summons issued to all interested parties. See *Pritchard on Wills and Administration of Estates*, Chapter 6, Article III.

## **CHAPTER FOUR**

### **LETTERS AND BOND**

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Legal Authority (T.C.A. 30-1-101 et seq.)

No person may enter upon the administration of a deceased person's estate until he/she has procured authorizing letters, whether they be testamentary or of administration. T.C.A. 30-1-101. A person serving as an executor or administrator may also be referred to as a personal representative. All Letters shall be recorded by the clerk.

1. Letters Testamentary are issued to the person named as executor in the Last Will and Testament of a decedent.
2. Letters of Administration are issued to the person serving on an intestate estate.
3. Letters of Administration CTA are issued to a person other than the person named as executor in the Last Will and Testament.
4. Administrator pendente lite is appointed where a will is contested.
5. Administrator ad litem is appointed where there is no personal representative or the personal representative is adversely interested.

The probate court of the county of decedent's residence has jurisdiction to grant letters. If the decedent was a resident of more than one county, either county has jurisdiction. T.C.A. 30-1-102, T.C.A. 32-2-101 If the decedent is a nonresident of the state, the probate court of any county in this state has jurisdiction where (1) the deceased has property; (2) any debtor of the deceased resides; (3) any debtor of a debtor of the deceased resides, if debt is unpaid; and (4) any suit is to be brought, prosecuted, or defended in which the estate has an interest. T.C.A. 30-1-103; any nonresident may serve as personal representative of an estate. See T.C.A. 30-1-104 regarding service of process.

Application for Letters Testamentary or Letters of Administration shall be made by a verified petition (T.C.A. 30-1-117). No notice is required except for a solemn form probate.

Any personal representative shall take an oath for faithful performance. The oath may be taken in the presence of the judge, a clerk or a notary public (T.C.A. 30-1-111).

In an intestate estate, administration shall be granted to first the spouse, then to the next of kin, and then to a creditor proving debt (T.C.A. 30-1-106).

## Bond

Bond is required unless:

1. The will waives bond
2. The residuary beneficiary and the personal representative are the same and the court approves
3. All beneficiaries of the estate are adults and waive in writing and the court approves
4. The personal representative is a bank and excused pursuant to 45-2-1005.

If bond is required, letters shall not issue until a sufficient bond is made by the personal representative. Bond shall be at least the value of the estate and not more than double the value of the estate. (Pursuant to T.C.A. 31-2-103, the real property vests immediately on death and is not administered by the personal representative unless authority is given in the will or upon court order). The bond shall be payable to the state and have two sureties or one corporate surety.

## Creditor to Qualify

If neither the spouse nor next of kin make application for administration, then administration shall be granted to a creditor proving the decedent's debt on oath before the probate court; provided, that when there is more than one next of kin, the probate court may decide which of the kin shall be entitled to administration (T. C. A. 30-1-106).

The court may appoint an administrator when six (6) months have elapsed from death, and no person will apply or can be procured to administer on the decedent's estate.(T.C.A. 30-1-301).



## **CHAPTER FIVE**

### **ELECTIVE SHARE AND ALLOWANCES**

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Upon application by the surviving spouse, the personal representative is required to disclose the state and condition of the estate so that the surviving spouse may act as personal interest may require. (T.C.A. 31-4-103)

These petitions may only be filed within 9 months after the date of the decedent's death. (T.C.A. 31-4-102)

#### **Allowances to Family**

##### Specific Exemptions

In case of intestacy, the surviving spouse or unmarried minor children and in case of testacy a dissenting spouse is entitled absolutely to the following property of the estate having a Fair Market value that does not exceed \$50,000.00:

1. Tangible personal property normally located in, or used in or about, the principal residence of the decedent and not used primarily in trade or business or for investment purposes, and
2. A motor vehicle or vehicles not used primarily in a trade or business. If there is no surviving spouse, the decedent's unmarried minor children are entitled as tenants in common only to exempt property as described in subdivision (a)(1). Rights to this exempt property are in addition to any benefit or share passing to the surviving spouse or unmarried minor children by intestate succession, elective share, homestead or year's support allowance.  
(T.C.A. 30-2-101 (a)(1) and T.C. A. 30-2-101(a)(2))

Such property shall belong to the surviving spouse, if any; otherwise it shall belong to the unmarried minor children in equal shares.

Where a deceased shall die intestate leaving a surviving spouse, until letters of administration are granted, the surviving spouse may take into his or her possession and make use of any crop then growing and of the provisions on hand as may be necessary for the support of the surviving spouse and family; the surviving spouse may also use the stock, implements and plantation utensils for the purpose of completing, securing and selling such crop. (T.C.A. 30-2-101(b))

Application for this property must be made by the surviving spouse or other custodian of

unmarried minor children before the property is distributed or sold. If for some reason they do not receive it and it is sold, the court shall order the money paid to them at any time before it is paid out for claims or distributed. (T.C.A. 30-2-101(c))

#### Year's Support (T.C.A. 30-2-102)

In addition to the right to homestead and exempt property, the surviving spouse of an intestate, or a spouse who elects to take action against a decedent's will, is entitled to a reasonable allowance in money out of the estate for his or her maintenance during the period of one year after the death of the spouse, according to his or her previous standard of living, taking into account the condition of the estate of the deceased spouse. The allowance so ordered shall be made payable to the surviving spouse, unless the court finds that it would be just and equitable to make a division of it between the unmarried minor children. If there is no surviving spouse, the allowance shall be made to the unmarried minor children. The court may authorize the surviving spouse to receive any personal property of the estate in lieu of all or part of the money allowance authorized by this section, and in any case where the court makes an allowance in money, the surviving spouse shall be entitled to select and receive any personal property of the estate, of a value not exceeding the allowance in money, which shall be in lieu of and which value shall be credited against the allowance. The Court may consider assets that may have passed to the spouse outside of probate when setting the allowance.

The allowance authorized by this law is the absolute property of the surviving spouse for said uses and shall be exempt from all claims and shall not be taken into the account of the administration of the estate of said intestate nor seized upon any precept or execution.

In determining the amount to be allowed as a year's support, the court may, in its discretion, appoint freeholders to set aside such year's support, as heretofore required by law. (T.C.A. 30-2-102(e))

If the allowance set by the court is not satisfactory to the surviving spouse electing against the decedent's will or the surviving spouse of an intestate decedent, unmarried minor children of an intestate, or the personal representative, appeal may be made to the appropriate court in accordance with T.C.A. 30-2-609. (T.C.A. 30-2-102(f))

#### Wages

Employers are authorized to pay to the surviving spouse of a deceased employee any wages or salary due the employee at the time of death not in excess of \$10,000.00. This sum paid, however, is to be charged against the year's support family allowance, homestead, and other allowances or exemptions of the surviving spouse. (T.C.A. 30-2-103(b)(2)).

### Sums Due Decedent of Less Than \$10,000.00 After Six Months

If six months pass after a decedent's death without application being made for the appointment of an executor or administrator, then any person owing or holding for a decedent a sum not in excess of \$10,000.00 is authorized to apply such sum directly to the decedent's surviving spouse; or if there be no surviving spouse, then directly to the custodians or guardians of the decedent's unmarried minor children in shares equal to the number of such children, for their maintenance and support. This provision shall apply to sums not in excess of \$10,000.00 which become due or payable either before or after decedent's death; but any sums paid hereunder shall be charged against the family allowance, homestead and other claims and exemptions of the surviving spouse and unmarried minor children. If the sum due or payable is in excess of \$10,000.00, the excess shall be paid to an executor or administrator or as otherwise ordered by the court. (T.C.A. 30-2-103(b))

### Insurance

Generally, a deceased husband's life insurance is not an asset of the estate and is not subject to claims. (However, the life insurance may be considered part of the gross estate for Federal Estate Tax purposes.) Devolution of insurance proceeds is according to statute, as follows:

Any life insurance effected by a married person on his/her own life shall in case of his/her death, inure to the benefit of the surviving spouse and children, and the money thence arising shall be divided between them according to the statutes of distribution, without being in any manner subject to the debts of the decedent.

Provided, however, that the proceeds of such insurance payable to a testate estate shall pass, as part of the estate and under the dispositive provisions of the will, as ordinary cash whether or not the will uses any apt or express words referring to the insurance proceeds, but such proceeds shall not be subject to the debts of the decedent unless specifically charged therewith in the will. (T.C.A. 56-7-201)

Whenever a married woman causes life insurance to be effected upon her husband's life, it shall in no case be subject to the debts of the husband, but shall inure to the benefit of the widow and child, or widow or children, as the case may be.

Provided, however, that any life insurance proceeds payable to the testate estate shall pass under the dispositive provisions of the will, but shall not be subject to the debts of the husband unless specifically charged therewith in the will. (T.C.A. 56-7-202)

The net amount payable under any policy of life insurance or under any annuity contract upon the life of any person made for the benefit of, or assigned to, the wife and/or children, or dependent relatives of such persons, shall be exempt from all claims of the creditors of such person arising out of or based upon any obligation created after January 1, 1932, whether or not

the right to change the named beneficiary is reserved by or permitted to such person. (T.C.A. 56-7-203)

#### Income Tax Refund Up to \$500.00

Where no administrator or executor has been appointed within sixty days of the death of the deceased person, and where the United States Treasury Department determines there exists an overpayment of federal income tax and one person in whose favor the overpayment is determined is dead at the time such overpayment of tax is to be refunded and irrespective of whether the deceased had filed a joint and several or separate income tax return, the amount of such overpayment if not in excess of \$500.00 shall be the sole and separate property of the decedent's survivor or survivors, if any, entitled thereto in accordance with the laws of descent and distribution of the state of Tennessee, and refund of said overpayment directly to said survivor or survivors by the United States shall operate as a complete acquittal and discharge to it of liability from any suit, claim or demand of whatsoever nature by any creditor of the decedent or other person. (T.C.A. 31-1-107(a))

#### Soil Conservation Payment

If a decedent was due payments from the United States under the Soil Conservation and Domestic Allotment Act at the time of death, then the surviving spouse shall receive the payments for the use of the surviving spouse and minor children. If there are minor children and no surviving spouse, then payment shall be made to the natural guardian of the minor children. In the event there is no surviving spouse or minor children, then the payments will pass under the decedent's will or according to the laws of descent and distribution if a valid will does not exist. All such payments are free from the claims of any and all creditors, except the United States. (T.C.A. 31-1-107(b))

#### Homestead

The Tennessee Constitution Article 11, Section 11 provides as follows:

“There shall be a homestead exemption from execution in an amount of five thousand dollars or such greater amount as the General Assembly may establish. The General Assembly shall also establish personal property exemptions. The definition and application of the homestead and personal property exemptions and the manner in which they may be waived shall be as prescribed by law.”

The right to homestead is essentially a right to occupancy for life. The descent of homestead is provided for by statute (T.C.A. 30-2-201 thru 30-2-211) as follows:

Unless the homestead has been converted to cash by court order (T.C.A. 30-2-209) and distributed, the homestead exempt in the possession of or belonging to

each head of a family shall, upon such person's death, any provision by will to the contrary notwithstanding, go to the surviving spouse during his/her natural life, with the products thereof, for his/her own use and benefit and that of his/her family who reside with him/her, and upon his/her death, any provision by will to the contrary notwithstanding, it shall go to the minor children of the decedent, free from the debts of the father, mother, or said children. Upon the death of the minor child or children, or their arrival of age, the land may be sold, and the proceeds distributed among the heirs of the deceased head of a family as if he/she had died intestate.

Upon the death of said head of a family, without surviving spouse or minor children, said land shall be subject to sale for the payment of the debts as may be legally established against his/her estate as in other cases, and the remainder distributed among the heirs.

The value of improvements are included in setting aside homestead. Clark vs. Bullen, 247 S.W. 107, 147 Tenn. 261 (1922)

Homestead is not exempt from sale for the payment of public taxes legally assessed upon it, or from sale for the satisfaction of any debt or liability contracted for its purchase or for improvements made on the homestead. (T.C.A. 26-2-306)

The head of a family in his/her lifetime may elect where his/her homestead is to be, whether living on it or not. (T.C.A. 26-2-307)

The right to homestead exists in land held by entireties. Triable vs. Trimble, 458 S.W.2d 794, 224 Tenn. 571 (1970). Homestead cannot exist in lands held by tenancy in common, though by husband and wife. Kellar vs. Kellar, 221 S.W. 189, 142 Tenn. 524 (1920)

#### Procedure to Set Aside Homestead

The surviving spouse may make application to the probate court (or circuit or chancery) in the county where the deceased spouse last resided, for the appointment of two freeholders or householders of the county unconnected by affinity or consanguinity with those interested in the estate of the deceased, to allot and set apart, in connection with the county surveyor, or his/her deputy, to the applicant, homestead. (T.C.A. 30-2-204)

When making application, the petition must be served upon the personal representative, if one has been appointed, and upon the heirs or devisees, and distributees or legatees, resident in the state. If there is a minor interested, his/her guardian must be served, and, if no guardian has been appointed, the court must appoint a guardian ad litem for the minor. (T.C.A. 30-2-203)

The county surveyor or his/her deputy shall notify the two freeholders or householders

(commissioners) appointed by the court of the time and place, to be designated by him/her, of laying off the homestead. He/she will place them under oath for faithful and true performance. (T.C.A. 30-2-207). Commissioners may view, and take into estimate, lands outside the county if directed to by the court's order. (T.C.A. 30-2-208).

If real estate is so situated that homestead cannot be set apart as provided by law, then the realty shall be sold and \$5,000.00 of the proceeds invested in real estate, under the direction of the court having jurisdiction to be held as homestead, or the court may order the payment of \$5,000.00 in cash or personal property outright in lieu of homestead rights in the realty of the deceased. (T.C.A. 30-2-209)

The commissioners must exhibit in their report a plat of the homestead, and also plainly set forth the homestead by metes and bounds where the homestead can be so assigned, and if the report is confirmed by the court, the clerks shall enter it in full with the plat on the records of the court. (T.C.A. 30-2-210)

Unless the applicant for homestead is a personal representative of the deceased, the proceedings are short and simple, without the aid of a jury and with a minimum of formality. The court shall hear the application, determine it, and make an order at the first term after notice. (T.C.A. 30-2-206)

The clerk shall within forty days after adjournment of the court, deliver to the county surveyor a copy of the order. (T.C.A. 30-2-207) (County surveyors are provided for by the Tennessee Code, Title 8, Chapter 12.)

### Valuation for Inheritance Tax

Computing the value of homestead for inheritance tax purposes is by the rule, method, and standard of mortality and of value set forth in the actuarial tables of mortality in use by the IRS for federal estate tax purposes at the time of the decedent's death. The value of the interest remaining after any such temporary interest, shall be determined by deducting the computed value of the temporary estate from the value of the entire property in which such interest exists. Unless otherwise provided by the transferor, the tax on such property, interests, and remainders shall be payable out of the property in which such temporary interests and remainders exist. (T.C.A. 67-8-301 thru 317)

### **Election By Spouse Against Decedent's Will**

Dower and curtesy as heretofore known have been abolished. However, this abolition does not abridge nor affect rights which vested before April 1, 1977. (T.C.A. 31-2-102)

If a married person domiciled in this state dies, the surviving spouse has a right of election to take an elective share of the decedent's estate. Such elective share, when so

determined, shall be exempt from the claims of the unsecured creditors. (T.C.A. 31-4-101)

Any conveyance made fraudulently to children or others with an intent to defeat the surviving spouse of his or her distributive or elective share, is voidable at the election of the surviving spouse. (T.C.A. 31-1-105)

### Procedure

The surviving spouse may elect to take his or her elective share in the probate estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of death.

The court shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the decedent's estate whose interests will be adversely affected by the taking of the elective share.

The surviving spouse may withdraw his or her demand for an elective share at any time before entry of a final determination by the court.

After notice and hearing, the court shall determine the elective share and shall order its distribution and/or vesting to the surviving spouse. If it appears that a fund or property has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceedings may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he/she would have been if relief had been secured against all persons subject to contribution.

The order or judgment of the court may be enforced as necessary in a suit for contribution or payment in other courts of this state or other jurisdictions. (T.C.A. 31-4-102)

### Time Extension Due to Litigation

When the title of the surviving spouse to property devised or bequeathed by the will is involved in pending litigation so that an election to dissent cannot be advisedly made, the survivor shall have an additional year from the date of the probate of the will within which to elect, provided that the court may upon a proper showing further extend the time to meet the requirements of the situation. Any such action is to be duly recorded by the clerk. (T.C.A. 31-4-102(a) (2))

### Mental Incompetency or Minority of Surviving Spouse

When the surviving spouse has been adjudged mentally incompetent as described by Chapter 4, Parts 1 and 2 of Title 34, Tennessee Code Annotated, or is under eighteen years of

age at the time the will is admitted to probate, upon a petition filed by a guardian, conservator, or next friend of either, within one year from probate, or within any extension period so granted, alleging that it would be to the interest of the survivor to take his/her elective share, the court having the proper jurisdiction is empowered to appoint a guardian ad litem, hear proof and declare or not declare an election and to enter judgment accordingly, subject to appeal. (T.C.A. 31-4-104)

#### Death of Surviving Spouse Within Dissent Time

In the event the surviving spouse dies after the death of the spouse-testator and before the time for dissent (election of share) expires, the personal representative of the decedent's surviving spouse may, in like manner and every respect, make such election on behalf of the deceased spouse. (T.C.A. 31-4-105)

#### Effect of Divorce, Annulment, and Decree of Separation

See same title under Chapter Six, Intestacy.



## CHAPTER SIX

### INTESTACY

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Formerly, the law made a sharp distinction between real property (which descends) and personal property (which is distributed). Different rules governed the descent and distribution of property upon the death of a person who died without a will. Although the distinction between real and personal property remains important in areas of today's law, real and personal property in Tennessee now follow the same scheme in intestate descent and distribution.

Today, when any person dies intestate, after the payment of debts and charges against the estate, his/her property passes to his/her heirs as prescribed below. Any part of the estate of a decedent not effectively disposed of by will passes to his/her heirs in the same manner.

#### **General Rules of Descent**

##### Share of the Surviving Spouse

The intestate share of the surviving spouse is:

1. If there is no surviving issue of the decedent, the entire intestate estate.
2. If there are surviving issue of the decedent, either one-third (1/3) or a child's share of the entire intestate estate, whichever is greater. (T.C.A. 31-2-104)

##### Share of Heirs Other Than Surviving Spouse

The part of the intestate estate not passing to the surviving spouse, or the entire intestate estate if there is no surviving spouse, passes as follows:

1. To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;
2. If there is no surviving issue, to his/her parent or parents equally;
3. If there is no surviving issue or parent, to the brothers and sisters and the issue of each deceased brother and sister by representation; if there is no surviving brother or sister, the issue of brothers and sisters take by representation.
4. If there is no surviving issue, parent, or issue of a parent, but the decedent is survived

by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation, and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or maternal side, the entire estate passes to the relatives on the other side in the same manner as the half. (T.C.A. 31-2-104)(b))

### Effect of Divorce, Annulment, and Decree of Separation

A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse, unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation which does not terminate the status of a husband and wife is not a divorce for purposes of intestate succession or elective share from a will. For these purposes, a surviving spouse does not include:

1. A person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as husband and wife;
2. A person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or
3. A person who was a party to a valid marital dissolution agreement of a valid proceeding concluded by an order purporting to terminate all marital property rights. (T.C.A. 31-1-102)

### The Parent-Child Relationship

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

1. An adopted person is the child of an adopting parent and not of the natural parents, except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent.
2. In cases not covered by 1 above, a person born out of wedlock is a child of the mother. That person is also a child of the father, if:
  - a. The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void, or

- b. The paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, but the paternity established under this subdivision is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child. (T.C.A. 31-2-105)

### Afterborn Heirs

Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent. (T.C.A. 31-2-108)

### Renunciation or Disclaimer of Succession (T.C.A. 31-1-103)

A person who is:

1. The donee of a gift, whether outright or in trust;
2. A recipient of property from a decedent's estate;
3. A recipient of property on the exercise of a power of appointment;
4. A recipient of property resulting from another person's disclaimer;
5. A recipient of property resulting from any other type of gratuitous transfer;
6. A fiduciary holding powers as a fiduciary; or
7. A beneficiary designated in a pay-on-death account, an insurance policy, an individual retirement account, an annuity, a retirement plan, whether qualified or not, or any other type of deferred compensation arrangement;

may disclaim all or part of the property, powers or interest therein as provided herein. Such disclaimer may be made by the person's personal representative, guardian, limited guardian, conservator, attorney-in-fact or parent having custody if the disclaimant is a minor and no legal guardian has been appointed.

To be effective the disclaimer must be an irrevocable and unqualified refusal by a person to accept an interest in property or to retain fiduciary powers but only if:

1. Such refusal is in writing, which writing shall:
  - A. Describe the property or part thereof or interest therein or powers

disclaimed;

- B. Be signed by the person disclaiming or such person's representative; and
  - C. Declare the disclaimer and the extent thereof.
2. Such writing is received by the transferor of the interest, his/her legal representative, or the holder of the legal title to the property to which the interest relates, and, if the subject of the disclaimer is realty, is filed in the county register's office and, if the disclaimer involves an interest in a decedent's estate, with the court in which the decedent's estate proceedings are or would be pending not later than the date which is nine months after the later of:
    - A. The date on which the transfer creating the interest or power in such person is made, or
    - B. The day on which such person attains age twenty-one.
  3. Such person has not accepted the interest or any of its benefits or exercised the power; and
  4. As a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either:
    - A. To the spouse of the transferor; or
    - B. To a person other than the person making the disclaimer.

Unless the decedent has otherwise indicated by his will, the interest disclaimed passes to those persons including the ones who would take under T.C.A. 32-3-105 as if the person disclaiming had predeceased the decedent. Unless the donor of a gift or the creator of a power has otherwise indicated in the document evidencing the gift or creating the power, the interest disclaimed passes as if the person disclaiming had died intestate, or, if the person disclaiming is one designated to take pursuant to a power of appointment, as if the person disclaiming had predeceased the donee of the power. In every case the disclaimer relates back for all purposes to the date of death of the decedent, the date of the gift or the date of death of the donee of a power, as the case may be. If the disclaimer is of a fiduciary power, the power will either be exercisable by some other fiduciary or void.

Any:

1. Assignment, conveyance, encumbrance, pledge, or transfer of property or an interest therein or any contract therefore; or
2. Written waiver of the right to disclaim or any acceptance of property by an heir, devisee, donee, person succeeding to a disclaimed interest, beneficiary, or person designated to take pursuant to a power of appointment; or
3. Sale or other disposition of property pursuant to judicial process; made before the

expiration of the period in which he/she is permitted to disclaim, bars the right to disclaim as to the property.

The right to disclaim granted by this section exists irrespective of any limitation on the interest of the person disclaiming in the nature of a spendthrift provision or, similar restriction.

This section does not abridge the right of any person to assign, convey, release, or disclaim any property arising under any other section of this title or any other statute.

Any interest in property which exists on April 1, 1977, at one minute past midnight (12:01a.m.), but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be disclaimed after one minute past midnight (12:01 a.m.) on April 1, 1977, as provided herein. An interest which has arisen prior to one minute past midnight (12:01 a.m.) on April 1, 1977, in any person other than the person disclaiming is not destroyed or diminished by an action of the person disclaiming taken under this section. (T.C.A. 31-1-103)

#### Person Feloniously Killing Another Forfeits All Rights In and To Deceased's Property

Any person who shall kill or conspire with another to kill, or procure to be killed, any other person from which said first named person would inherit the property, either real or personal or any part thereof, belonging to such deceased person at the time of death, or who would take said property, or any other part thereof, belonging to such deceased person at the time of death, or who would take said property, or any other part thereof, by will, deed, or otherwise, at the death of the deceased, shall forfeit all right therein, and the same shall go as it would have gone under the provision of section T.C.A. 31-2-104, or by will, deed or other conveyance, as the case may be, provided, that this section shall not apply to any such killing as may be done by accident or in self defense. (T.C.A. 31-1-106)

#### Escheats

If a decedent, whether or not he/she is domiciled in this state, leaves no one to take his/her estate or any portion thereof by his/her will and no one other than a government or governmental subdivision or agency to take his/her estate or a portion thereof by intestate succession, under the laws of this state or any other jurisdiction, the same escheats to the state as of the time of his/her death. (T.C.A. 31-6-101(a))

Property passing to the state, whether held by state or its officers is subject to the same liens, charges and trusts to which it would have been subject if it had passed by will or intestate succession. (T.C.A. 31-6-101(b))

### Reports Concerning Property Which May be Subject to Escheat

All administrators, executors, trustees, guardians, or other fiduciaries having in their custody or control property which may be subject to escheat shall promptly, after obtaining knowledge as to facts indicating the possibility of the escheat of any such property, file with the state treasurer a report showing with such other information as the treasurer may require, the nature, location and approximate value of such property, the basis for believing that it may be subject to escheat, and whether there are any other persons who have asserted or may assert claims thereto. (T.C.A. 31-6-107(a))

See T.C.A. 31-6-101 through 31-6-109 for details of escheat proceedings.

### Advancements

All advancements, whether by settlement or otherwise, in the lifetime of deceased, or by testamentary provision, shall be collated and valued. The title to property is not transferred back to the estate; only the value is used in determining equality of distribution. The court will then divide the estate so as to bring about absolute equality, except where a will's provisions makes this impossible. (T.C.A. 31-5-101 through 31-5-104)

The probate court has jurisdiction to partition real estate and order distribution among heirs and distributees, and has full power to cause accounts to be taken and valuations of lands to be made, so as to enforce equality of partition and distribution. (T.C.A. 31-5-105).

## CHAPTER SEVEN

### INVENTORY OF ESTATE

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#### Making Inventory-Return Notice to Beneficiaries

The personal representative, within sixty days after entering on the administration of a testate or intestate estate, shall make a complete and accurate inventory of the probate estate of the deceased and return the same to the Clerk of the Court, verified by his/her oath. Inventory may be excused by the will or all distributees or legatees. If any residuary beneficiary refuses to agree to the waiver or later revokes his agreement, the requirement of an inventory is reinstated. (Secor's TN Probate)

The personal representative, within sixty days after entering on the administration shall notify:

1. Each legatee, devisee or entity by sending, by first class mail or personal delivery, a complete copy of the paragraph(s) of the will containing such bequests to those beneficiaries only receiving bequests; and a complete copy of the will to those beneficiaries sharing in the residue of the estate.
2. Each residuary distributee of the deceased for an intestate estate by sending such persons a copy of letters of administration.
3. A trustee, if any portion is distributable to a trustee, by sending a copy of the will.

Within the sixty day period, the personal representative shall also execute and file with the clerk an affidavit that the required copies have been mailed or delivered to the beneficiaries or distributees, and explanation of effort to identify and locate any to whom copies have not been sent. (T.C.A. 30-2-301)

#### Recording Of Inventory

The clerk shall present the inventory to the court, and, if it appears to be regular, the court shall order it to be recorded in the book of inventories. (T.C.A. 30-2-302)

Inventory by a personal representative appointed to succeed a resigned representative shall be returned in one month from the time of appointment. (T.C.A. 30-1-113)

## Character of Inventory

A preferable practice in filling out an inventory is to include an appraisal of each item as of the date of death since the same information must be included in the state inheritance tax return. (T.C.A. 67-8-412)

Safe deposit vaults may not be opened without notice to the Commissioner of Revenue who has the right to be present and to examine and inventory the contents. The commissioner may be present by a designated representative which may be the bank. Violations subject the violator to a penalty of \$500.00. (T.C.A. 67-8-418; also see T.C.A. 45-2-905)

Notes and other evidences of debts due the estate should be stated with interest to date of death, and they should be classified as good, doubtful, or bad, for debts inventoried without comment are presumed collectible.

Assets subject to liens or other pledge of security should be listed showing the value of the asset less the amount of indebtedness secured.

Intangible property must also be included in the inventory.

The judge (or clerk and master) may in his/her discretion authorize the personal representative to verify by oath his/her inventory before any person authorized by law to administer oaths within or without the state of Tennessee whenever the personal representative is unable to appear before the clerk to verify. (T.C.A. 30-2-301(a))

The clerk, after taking affidavit as above and filing, shall present it to the judge, and if it appears regular, detailed and particular, the judge will order it recorded in the book of inventories. (T.C.A. 30-2-302)

The clerk is under duty of law when the inventory is filed to examine and compare it with the assessment rolls of the county for ascertaining whether any personal property of the estate is subject to back assessment or reassessment within each of three years back and if he/she so finds he/she shall report it to the county trustee. (T.C.A. 67-1-1009) If the clerk fails or refuses to perform this duty, he/she is liable on his/her official bond for the taxes and penalty which might have been recovered plus a penalty of fifteen percent to be recovered on suit by any district attorney or proper agent of the state. (T.C.A. 67-1-1010; Hamilton National Bank vs. Joe Richardson, Trustee, 304 S.W.2d 504, 42 Tenn. App. 486 (1957))



## CHAPTER EIGHT

### INSOLVENT ESTATES

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#### Initiation of Administration

The administration of an insolvent estate shall begin upon the filing of a Petition to Probate or the application for Letters of Administration by the personal representative or a creditor in the Court having probate jurisdiction. (T.C.A. 30-5-101)

If the value of all assets of the deceased, including real estate which could be recovered (TCA 30-2-402), is insufficient to pay the debts, expenses and taxes of the decedent, the estate is insolvent.

#### Notice of Insolvency-Filing Copies

After the time for filing claims has expired as provided by T.C.A. 30-2-310, if the estate is unable to pay all of its creditors, the personal representative shall file with the clerk a Notice of Insolvency. A copy of the notice shall be sent by certified mail, return receipt requested, to each creditor who has filed a claim. Such notice may be mailed to creditors by the attorney for the estate, the personal representative or, if requested, by the clerk. (T.C.A. 30-5-102)

#### Notice of Insolvency - Contents - Effect of No Objection

The notice of insolvency shall contain an accounting of assets which have come into the hands of the personal representative and a proposed plan of distribution in accordance with T.C.A. 30-2-317.

Such notice shall bear, in a conspicuous manner, the following language “**Objections to this proposed plan of distribution must be filed with the clerk within thirty days from the date of receipt of this notice.**”

If no objections are filed within the thirty-day period, the personal representative may execute the proposed plan of distribution, and close the estate, relieving personal representative of any further liability to the estate. (T.C.A. 30-5-103)

#### Hearing on Objections to Plan Notice

If an objection to the proposed plan of distribution is filed with the clerk within the thirty day waiting period, the clerk shall schedule a hearing no less than fifteen days or more than thirty days from the last day which objections may be filed.

The clerk shall give notice of the hearing date to the attorney for the estate, to the personal representative, and to the creditors filing the objection, and to all claiming creditors (T.C.A. 30-5-104)

#### Clerk's Report

After the hearing, the clerk is to report his/her finding to the court within ten days. (T.C.A. 30-5-015)

If no exceptions are filed with the clerk, the clerk's report shall become the judgment of the court.

If an exception is filed, the matter shall be determined by the court.

Upon final determination of an objection to a plan of distribution, distribution shall be made and the estate closed. (T.C.A. 30-5-105)

## CHAPTER NINE

### DEATH TAXES

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#### 1. Notice to Commissioner

The probate clerk or clerk and master of the county wherein an estate is administered shall forward by mail upon the issuance of letters of administration (or testamentary) the “Notice to Commissioner” on the form provided by the Tennessee Commissioner of Revenue, which includes the name and date of death of the decedent, the decedent’s address at the time of death, the name and address of the executor, administrator, or trustee qualified, together with the executor’s, administrator’s or trustee’s estimate of the gross value of the estate (T.C.A. sec. 67-8-406(a)). For this service, the clerk shall charge the fee allowable under the statute T.C.A. Sec. 67-8-406(b). Violation of the duty to forward Notice to Commissioner shall be subject to a penalty of between \$100 - \$500. (T.C.A. Sec. 67-8-406(c))

The clerk may indicate at the foot of the form the name and address of the attorney handling the estate for the use of the department of revenue.

Upon receipt of the notice from the clerk of the probate court, the commissioner will furnish the personal representative of the estate all necessary forms for the proper inventorying and return of the property of the estate. T.C.A. Sec. 67-8-409(a)

The personal representative, or person(s) in possession of property of the decedent, shall within nine months from the death of the decedent, prepare and file with the commissioner an exact copy of the will, if any, and a tax return for the estate to be executed under penalties of perjury upon the form prescribed by the commissioner. T.C.A 67-8-409(b)

If the gross estate of the decedent is less than the maximum single exemption allowed by T.C.A. Sec. 67-8-316, the personal representative or person in possession of property may file a copy of the decedent’s will, if any, and a return of the estate, executed under penalty of perjury, upon a short form prescribed by the commissioner. T.C.A. Sec. 67-8-409(c)

Upon receipt of the return, the commissioner shall proceed with the appraisal and investigation of the estate and notify the personal representative of any additional amounts found to be due.

Before a final accounting or settlement may be made by the court, a certificate from the Tennessee Department of Revenue must be received by the Clerk showing payment of taxes or showing that the estate is non-taxable. The receipt is to be sent in duplicate to the executor by the

Department of Revenue, one of which the executor shall file with the court. T.C.A. Sec. 67-8-420(a)

If the gross estate of a decedent does not exceed \$100,000, and if the decedent did not make any gifts in excess of the maximum single exemption allowable free of tax under T.C.A. Sec. 67-8-104, in his/her lifetime, the court may waive the filing of an inheritance tax return upon a statement to such effect by the personal representative under penalty of perjury. T.C.A. Sec. 67-8-409(g)(1)

## 2. Inventory of Safe Deposit Box

There are two statutes governing safety deposit boxes. One statute is found in the inheritance tax chapter (T.C.A. Sec. 67-8-418) of the Code and the other statute is contained in the statutes governing banking institutions. (T.C.A. Sec. 45-2-905) To the extent the two statutes are in conflict, the latter statute controls.

Any person having the right of access to a safety deposit box to which the decedent had access shall, before gaining access to the box, notify the financial institution that the decedent has died. T.C.A. Sec. 67-8-418(a)

Upon the notification to the banking institution of the death of the sole or last surviving safe deposit box lessee, the institution shall notify the Department of Revenue within 30 days of their knowledge of said death. T.C.A. Sec. 45-2-905(d)

No safe deposit box may be opened after the death of any person who, at the time of such person's death, had the right or privilege of access thereto, either as principal, deputy, agent, co-tenant or otherwise, without notice to the Commissioner. T.C.A. Sec. 67-8-418(b)

Access to a safe deposit box shall be in accordance with the agreement between a lessor and lessee or lessees. The death of a person authorized access to a safe deposit box by the agreement shall not terminate the access of others so authorized in all cases where there is a surviving lessee, whether the surviving lessee is an individual, trust, corporation or other entity, unless further access is restricted by the agreement or by court order. T.C.A. Sec. 45-2-905(b)

T.C.A. Sec. 45-2-905(c)(2) does permit a person named in a court order to search for a last will & testament, writings relating to burial plots or burial instructions, or insurance policy information, or if no person has been named by a court order, the lessee's spouse, parent, adult sibling or adult decedent, or a person named as executor in a copy of the lessee's purported will provided to the institution, and such person will be permitted to open the safe deposit box to search for said items with an officer or employee of the institution. A record of items removed from the box shall be made by the institution and the other person. T.C.A. Sec. 45-2-905(c)(2)

The duly qualified executor or administrator of the lessee may have access to and remove contents from the safe deposit box, without inventory unless an inventory is required by the institution or by court order. (T.C.A. Sec. 45-2-905(c)(1))

### 3. Federal Estate Tax

The probate clerk is not under a duty to advise the personal representative of the possibility of his liability for federal estate taxes. Nor is the clerk under a duty to check the accounting before final settlement to see whether federal estate taxes are in any way considered.

### 4. Estimating the Tax for Bond Purposes

As stated in Chapter Four, Letters and Bond, the probate court sets a sufficient amount for the personal representative's bond to cover any inheritance tax due or owing the state. T.C.A. Sec. 67-8-409

## CHAPTER TEN

### CLAIMS

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#### Notice to Creditors

It is the duty of the Clerk of the court in which an estate is being administered, within thirty (30) days after the issuance of letters testamentary or of administration, to give, in the name of the personal representative of the estate, public notice of the personal representative's qualification as such by two (2) consecutive weekly notices published in some newspaper of the county in which letters testamentary or of administration are granted, or, if no newspaper is published in that county, by written notices posted in three (3) public places in the county, one (1) of which shall be posted at the usual place for posting notices at the courthouse. (T.C.A. Sec.30-2-306(a)) The requirement of notice set forth above shall not apply if the letters testamentary or of administration are issued more than one (1) year from the decedent's date of death. (T.C.A. Sec. 30-2-306(e))

A sample of the Notice to Creditors can be found in the appendix, which, pursuant to (T.C.A. Sec. 30-2-306(b)), includes the following statement regarding time limitations for filing claims: All persons, resident and nonresident, having claims, matured or unmatured, against the estate are required to file the same with the clerk of the above named court within the earlier of four (4) months from the date of the first publication (or posting, as the case may be) of this notice or twelve (12) months from the decedent's date of death, otherwise their claims will be forever barred.

#### Duty of Personal Representative to notify Creditors

It is also the duty of the personal representative to notify any creditors of whom the personal representative has actual knowledge, or who are reasonably ascertainable, by personally delivering or mailing a copy of the published or posted notice.

#### Affidavit of Publication or Posting

Either an affidavit of the publisher of the newspaper in which the notice ran, or an affidavit of the personal representative in the case of public notice, shall be filed with the court evidencing the dates the notice ran in the newspaper, or the date on which the notice was first posted.( T.C.A. Sec. 30-2-306(c))

### Time Limitations on Filing of Claims

All claims and demands against the estate arising from a debt of the decedent shall be barred unless filed within the period prescribed in the notice published or posted as described above in accordance with T.C.A. 30-2-306(b). Claims must be filed with the clerk within the earlier of four (4) months from the date of the first publication (or of the posting, as the case may be) of said notice or twelve (12) months from the decedent's date of death. This notice however, is not sufficient when a creditor is known or is reasonably ascertainable, and the personal representative is required to give actual notice in person or by mail to any creditor whose address is known or reasonably ascertainable.

However, pursuant to T.C.A. 302-2-307(a)(1)(A) & (B):

- (1) If a creditor receives actual notice less than sixty (60) days before the expiration of the period prescribed in T.C.A. 30-2-306(b) or after the expiration of the period prescribed in T.C.A. 30-2-306(b) and more than sixty days before the date which is twelve months from the decedent's date of death, such creditor's claim shall be barred unless filed within sixty days from the date of receipt of actual notice; or
- (2) If a creditor receives actual notice less than sixty days before the date which is twelve months from the decedent's date of death or receives no notice, such creditor's claim shall be barred unless filed within twelve months from the decedent's date of death.

### Requirements of filed claims

The clerk shall file all claims which are filed not later than twelve (12) months from the decedent's date of death. The clerk shall return any claim submitted before the appointment of a personal representative or received more than twelve (12) months from the decedent's date of death. The filing of a claim by the clerk shall not create an inference as to whether the claim was timely filed. T.C.A. 30-2-307(d)

All claims filed with the clerk must be submitted in triplicate. The second and third copies do not need to be verified. T.C.A. 30-2-307(c)

Each claim must include: T.C.A. 30-2-307(b)

- a. An affidavit of the creditor, verified before an officer authorized to administer oaths, which states that the claim is a correct, just and valid obligation of the estate of the decedent, that neither the claimant nor any other person on the claimant's behalf has received payment of the claim, in whole or in part, except such as is credited thereon, and that no security for the claim has been received, except as thereon stated;
- b. If claim is evidenced by a written instrument, a photocopy of the instrument shall be filed;

- c. If claim is due by a judgment of decree, a copy of the judgment or decree, certified by the clerk of the court where rendered shall be filed;
- d. If claim is due by an open account, an itemized statement of the account shall be filed;

The fees authorized by T.C.A. 8-21-402(c)(1)(A) shall be paid to the clerk by the claimant at the time the claim is filed. T.C.A. 30-2-312

#### Entry of claim by clerk

Each claim filed with the clerk shall be entered in a well-bound book, (or entered in the computer) in which the following information shall be set forth: T.C.A. 30-2-312

- a. Title of the estate;
- b. Name and address of the creditor (as reflected by the claim filed);
- c. Nature and amount of the claim; and
- d. Date of filing.

Triplicate copies of the first pleading filed in original actions against a personal representative shall be filed with the clerk of the court where the administration originated, to be noted by the clerk in the record of claims as are other claims filed. T.C.A. Sec. 30-2-308

All actions pending against any person at the time of his death, which by law may survive against the personal representative, shall be considered demands legally filed against such estate at the time of the filing with the clerk of the court in which the estate is being administered of a copy in duplicate of the order or revivor, one of which copies shall be certified or attested, a notation of which shall be entered by the clerk in the record of claims, as in the case of other claims filed. Pending actions not so revived against the personal representative within the period prescribed in T.C.A. 30-2-307(a) shall abate. (T.C.A. 30-2-320)

#### Clerk's Notice to Personal Representative

Within five (5) days of clerk entering claim, the clerk shall notify the personal representative and the attorney of record by mailing each a true and correct copy of the claim. T.C.A. Sec. 30-2-313(a)



### Exceptions to claim

Until thirty days after the expiration of four months from the date of the notice to creditors given as provided in T.C.A. 30-2-306(b), the personal representative, or any party interested in the estate either as creditor, distributee, heir or otherwise, may except to such claim by filing written exceptions in triplicate with the clerk of the court in which the estate is being administered. T.C.A. Sec. 30-2-314(a)

However, if the filing of the claim as permitted by T.C.A. 30-2-307(a), occurs after the date which is four months from the date of the notice to creditors, the personal representative, or interested party may except to any such claim by filing written exceptions in triplicate with the clerk of the court in which the estate is being administered; provided that such exception is filed no later than thirty days from the date the personal representative receives notice from the clerk of the filing of the claim. Each exception shall include a reasonably detailed explanation of the ground or grounds upon which the person making such exceptions intends to rely. T.C.A. 30-2-314(a)

Within five days after the filing of exceptions to a claim the clerk shall notify the claimant of the exception by mailing the claimant a copy of the exception. T.C.A. 30-2-314(a)

### Trial of Disputed Claims- Jury Demanded

Should the claimant or party excepting desire a trial by jury, it shall be demanded by that party in the first claim or exception filed. However, a claimant who has not demanded a jury in the claimant's claim may do so within five days after receipt of notice of the filing of exceptions to the claim by filing a written demand for a jury with the probate court clerk. T.C.A. 30-2-313(c)

Should no exception be taken to a claim in which a jury trial has been demanded, the claim shall not be certified to the circuit court. T.C.A. Sec. 30-2-314(b)(2)

Both the circuit and the probate court, if it is a chancery or other court of record, have jurisdiction to conduct a trial by jury on claims and exceptions and shall be conducted all in the same manner and to the same extent as prescribed in T.C.A. 30-2-314. T.C.A. 30-2-314(e)

If the probate court is not a court of record, the clerk shall certify the claim and the exception to the circuit court for trial by jury. T.C.A. 30-2-314(b)(1)

Within five days after an issue triable by jury has been made, the probate clerk is required

to certify to the circuit court all papers on file relating to that claim. It is the duty of the clerk to give written notice to the claimant, the excepting party and the personal representative and to file with the circuit court a statement that such notice has been given. T.C.A. 30-2-314(c)

On motion of the personal representative or the excepting party, the claimant may be required by the court to make a cost bond, or in lieu thereof, file an affidavit of indigency. T.C.A. 30-2-314(d)(2)

### Trial of Disputed Claims- No Jury Demand

Unless a trial by jury is demanded, the claim is always disposed of in the probate court. Within ten days after the filing of the exception to the claim, the clerk shall set a date for the hearing of the exception to the claim, and mail notice of hearing to the personal representative, the claimant, and the party filing the exception. The hearing date shall not be less than fifteen days after the date of mailing the notice of hearing, nor more than eight months after the date of the notice to creditors. T.C.A. 30-2-315(a)(1)

The probate judge or clerk & master shall hear all the issues arising upon such exceptions when no jury is demanded. No other pleadings are required, and the testimony may be taken orally or by deposition. The court shall assess the cost accruing in consequence of the exceptions in accordance with its discretion, and all charges against the personal representative are proper charges against the estate. T.C.A. 30-2-315(a)(2)-(4)

A judgment upon the findings of the court shall be entered in the court and from the same an appeal may be perfected within thirty days from the date of entry of the judgment, to the Court of Appeals or the Supreme Court, as the case may be. The procedure on appeal shall be governed by the Tennessee Rules of Appellate Procedure.

A copy of the order, determining the claim to be valid or invalid, should be sent to the claimant as well as the personal representative.

Notwithstanding the provisions of T.C.A. 30-2-306 – 30-2-314, whenever there shall be instituted in any other court of competent jurisdiction an independent suit against a personal representative involving liability of the estate, a claim founded on the same cause of action shall have been or shall be filed against the estate in the manner provided in T.C.A. 30-2-307 and 30-2-308, which claim has not been adjudicated by the court wherein the administration is pending, the court wherein the administration is pending shall hold in abeyance any action on such claim until the final determination of the independent suit, whereupon, the filing of a certified copy of such final judgment or decree with the clerk of the court wherein the administration is pending, such court is authorized to enter judgment accordingly. It is not intended hereby to deprive the

judgment creditor of any other remedy provided by law for the enforcement of the final judgment or decree rendered in such independent suit. (T.C.A. 30-2-315)

A claim shall not become a final judgment against the estate until the expiration of the exception period prescribed in T.C.A. 30-2-314(a).

#### Judgment on claim when no exception filed

After the lapse of ninety days from and after the expiration of the time for entering exceptions to claims filed against the estate, the court may, upon the written application of any creditor, having a matured claim on which no independent suit is pending, to whose duly filed claim no exception has been filed, enter judgment for the creditor against the estate, provided that not less than five days' prior written notice of intention to file an application shall be given to the personal representative, stating the time at which the application is to be presented to the court. T.C.A.30-2-316

#### Priority of claims

The year's support is an expense of administration. (Hyder v. Hyder, 66 S.W.2d 235, 16 Tenn. App. 64 (1932) It is made irrespective of the condition of the estate as to its solvency or insolvency. (Graham v. Stull, 22 S.W. 738, 92 Tenn. 673, (1893)

The right of a surviving spouse to an elective share is superior to the rights of general creditors.

Homestead is not exempt from public taxes on it, vendor's liens for the property, or mechanics or materialman's liens for the improvements on it. (T.C.A. 26-2-306)

For other exemptions and allowances see Chapter Five, Elective Share and Allowances.

Note that under the state inheritance tax some property will be subject to taxes which will not, however, be subject to claims or demands and may not be part of the probate proceedings in the probate court where the property is never in the hands of the personal representative.

The estate may have property taxes (T.C.A. 67-5-502) and state income taxes (T.C.A. 67-2-110) which the personal representative shall pay as directed by the will or trust or otherwise from the assets of the estate.

All claims or demands against the estate of any deceased person shall be divided into the

following classifications, which shall have priority in the order shown: T.C.A. 30-2-317(a)

- a. Costs of administration, including but not limited to, premiums on the fiduciary bonds and reasonable compensation to the personal representative and the personal representative's counsel;
- b. Reasonable funeral expenses;
- c. Taxes and assessments imposed by the federal or any state government or subdivision of the federal or any state government, including claims by the bureau of TennCare pursuant to T.C.A. 71-5-116; and
- d. All other demands that may be filed as aforementioned within four (4) months after the date of notice to creditors.

The personal representative shall pay all demands against the estate in the order in which they are classified, and no claim shall be paid until the prior classes are satisfied. If there are not sufficient funds to pay all the claims in a class, the claims in that class shall be paid pro rata. T.C.A. 30-2-317(b)

Debts due upon bills single, bonds, bills of exchange and promissory notes, whether with or without seal, and upon settled and liquidated accounts by the debtor, are of equal dignity, unless otherwise provided, and are to be paid accordingly. T.C.A. 30-2-317(c)

The personal representative shall hold aside sufficient funds or other assets to pay each contested or unmatured claim (or the proper ratable portion thereof, as the case may be) with interest (if the claim be one bearing interest), until it is determined whether or not such claim is to be paid, or until such unmatured claim has reached maturity, also sufficient assets to meet the expenses of pending litigation and cost of court and any unpaid taxes. T.C.A. 30-2-317(d)

At any time prior to the expiration of the period fixed for the payment of claims, the personal representative may pay the preferred claims for which the estate may be liable, and upon order of the court may pay any debt of the decedent for which security may have been given which is in danger of being sold by way of foreclosure to the detriment of the estate. (T.C.A. 30-2-318(a))

If the executor or administrator knows or is willing to undertake that an estate is solvent, he/she may pay debts, but if he/she pays any debts other than those specified in T.C.A. 30-2-318(a) above prior to the expiration of the time fixed for the payment of claims and the estate proves insolvent, he/she and his/her sureties shall be liable to each and every creditor for his ratable share of the insolvent estate. (T.C.A. 30-2-318(b))

The primary responsibility for the payment of federal estate and Tennessee inheritance taxes is on the personal representative who must pay these taxes out of assets in his/her

hands prior to the payment of the debts of the estate.

Except in a case where the testator directs otherwise in the will, federal estate taxes are to be prorated equitably among beneficiaries and persons interested in the estate. (T.C.A. 30-2-614(b))

### Personal Representative Fees

Case law provides that executors and administrators shall be allowed by the court a reasonable compensation for their services to be approved prior to or at the time of the final accounting. However, if the will states a certain amount as compensation for the executor, or no compensation, the executor is bound to the terms of the will if he/she accepts the appointment. (Perlberg vs Jahn, cite as 773 S.W. 2d 925 (Tenn. App. 1989))

When an attorney serves as personal representative of an estate he/she may either employ other counsel or furnish his/her own professional services. When he/she furnishes his/her own services and saves the estate counsel fees by diligent and official legal services he/she should be allowed a greater compensation than ordinarily granted to a personal representative employing other counsel, but he/she can be paid only in his/her capacity as personal representative and not in both capacities.

### Clerk's Fees and Court Costs

The clerks of the various courts administering estates, guardianships, conservatorships, and other probate matters are entitled to demand and shall receive for their services fees as set out in T.C.A. 8-21-401(b).

### Time for Payment of Claims

All uncontested claims and all contested claims that have been finally adjudged and allowed shall be paid by the personal representative as soon as practicable, not in any event to exceed ninety (90) days after the expiration of five (5) months after the date of the notice to creditors, if the estate is solvent and the claims are paid according to classification as set forth above. T.C.A. 30-2-319

## CHAPTER ELEVEN

### DISTRIBUTION

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#### Time for Payment of Claims

All uncontested claims and all contested claims which have been finally adjudged and allowed shall be paid by the personal representative as soon as practicable, (but not in any event to exceed ninety days after the expiration of five months after the date of notice to creditors) if, after having segregated sufficient assets to meet the contingent liabilities referred to in T.C.A. 30-2-317, adequate assets are in his hands for this purpose, payment being made according to the classification of claims.(T.C.A 30-2-319)

#### Distribution of Balance – Final Settlement

Upon the payment of all uncontested claims and upon provision being made for expenses of administration, obligations on account of taxes and assessments which have not been settled, claims not due and undetermined contested claims, together with costs and expenses of litigation, the personal representative shall pay any balance to the distributees or legatees entitled thereto, unless granted additional time by the court, or by the terms of the instrument under which the personal representative is acting, and thereafter. When all legal liabilities have been paid, the balance remaining has been delivered to those entitled thereto or paid to the state to be handled in accordance with the provisions of T.C.A. 66-29-1, relating to unclaimed property or administered as in T.C.A. 30-2-402; provided that in the event of insolvency, the personal representative shall make and file with the court a final settlement of the estate.

#### Distributees Who Cannot Be Located, Infants, Persons Under Other Disabilities- Procedure for Payment of Shares

Whenever the personal representative of the estate of any deceased person in this state is ready to make his final report and settlement, and is prevented or precluded from making final settlement, because there is no personal representative of the estate of a deceased distributee to receive the share due such distributee or one or more payees or distributees cannot be located or for any reason refuse to receive the share due such distributee, such personal representative shall pay or deliver the share due any such distributee to the state treasurer, to be handled in accordance with the provisions of T.C.A. 66-29-1, relating to unclaimed property, and show such in his report. This share can be recovered later.

In cases involving payees or distributees who are infants or lunatics and without guardian

authorized to receive the property, the personal representative, before making final settlement, shall file a petition in the court in which the estate is being administered setting out this fact and pray for the appointment of a guardian, unless petition is made pursuant to T.C.A. 34-1-107. The court shall appoint a guardian, if practicable, or if impracticable, order the property belonging to such person paid or delivered into the state treasury, unless distribution is ordered pursuant to T.C.A. 34-1-107. Such payment or delivery shall be shown in the report and settlement of the personal representative, exhibiting the receipt of the guardian or state treasurer, as the case may be.

If the personal representative of the estate of a deceased person is unable to locate a distributee and such distributee's share of the estate is either personal property of nominal value or monetary legacy of nominal value, the personal representative may request instructions from the court concerning the amount, if any, which should be spent in locating the distributee and whether the amount spent in locating the distributee should be a general expense of the estate or a charge against the lost distributee's share and the disposition of the property if the distributee cannot be found, which disposition may include the authority to sell any tangible personal property. (T.C.A. 30-2-702)

#### Shares Placed in State Treasury – Application and Claim for Share

Shares so placed in the state treasury shall not become the property of the state, but shall be and remain trust property demandable at any time by the owner or by the guardian of any owner, distributee or by the personal representative of the deceased owner.

Any person lawfully entitled to receive any money paid into the state treasury pursuant to T.C.A. 30-2-702, may claim the amount due in accordance with the provisions of T.C.A. 66-29-1, governing the disposition of unclaimed property, and the state treasurer shall pay the amount, as in other cases, out of any money in the treasury; provided, the state shall not be liable for interest on any fund or funds paid into the state treasury under this law.

Property delivered to the treasurer pursuant to T.C.A. 30-2-702, may be claimed in accordance with the provisions of T.C.A. 66-29-1, governing the disposition of unclaimed property. (T.C.A. 30-2-703)

#### Refunding Bonds

Every legatee and distributee, or other person representing him, who applies for payment of his portion of the decedent's estate, or any part thereof, prior to the time provided therefore by law, shall, before receiving the same, give bond with two or more sufficient, or one corporate surety, in double the amount so to be paid, payable to the state, conditioned that if any debt or debts truly owing by the deceased shall be afterwards sued for and recovered or be otherwise duly made to appear, the legatee or distributee shall refund and pay his ratable part of such debt or debts out of the share or part so allotted to him. (T.C.A. 30-2-704)

### Recording, Filing, and Verity of Bond

The executor or administrator shall bring said bond into the proper court at the next session after its date, it shall be spread on the minutes, the origin shall be lodged in the office of the clerk, and said bond and the copy on the minutes shall have the verity and character of records. (T.C.A. 30-2-705)

### Scire Facias Against Obligor in Refunding Bond

When an executor or administrator has pleaded fully administered, no assets, or not sufficient assets to satisfy the plaintiff's or complainant's demand, and such plea has been found in favor of the defendant, and judgment has been recovered against him, to be levied on the assets of the deceased, the creditor, on his motion, may have scire facias against the obligors in such bond, to show cause why execution should not be issued against them for the amount of the judgment. (T.C.A. 30-2-706(a))

### Judgment and Execution

If there shall be judgment against the defendants to scire facias, issue writ to appear and show cause, or any of them, execution may issue thereon against the proper goods and chattels, land and tenements of such defendant or defendants. (T.C.A. 30-2-706(b))

### Receipt Executed for Legacy or Share

Every person interested in the distribution of an estate shall execute to the executor, administrator, clerk, or person whose duty it is to distribute the same, a receipt for his legacy, distributive share, or interest in the estate, upon payment of the same. It shall not be necessary for such receipt to be sworn or otherwise acknowledged before the clerk or a notary public. (T.C.A. 30-2-707)

### Application for Distributive Share of Legacy – Jurisdiction

Any distributee or legatee of the estate may, after the expiration of eighteen months from the grant of letters, apply to the probate or chancery court of the county in which administration was taken out, to compel the payment of his distributive share or legacy. (T.C.A. 30-2-710(a))



Form of Suit – Allegations – Verification of Application

The application shall be by petition or bill, shall set forth the claim of the applicant as legatee or distributee, shall allege that the assets of the estate are more than sufficient to pay the debts, charges, and other claims, if any, entitled to priority, and shall be verified, by affidavit. (T.C.A. 30-2-710(b))

Proceedings – Conduct Thereof – Determined Summarily

The proceedings under such application shall be conducted as other equitable actions, and heard and determined summarily as soon as practicable. (T.C.A. 30-2-710(c))

Establishment of Right as Legatee or Distributee

An affidavit before a commissioner of Tennessee, or before any consul or notary public, as to the pedigree or right as legatee or distributee of any person, may be received as prima facie evidence thereof by any personal representative in case no contest arises. (T.C.A. 30-2-711)

## CHAPTER TWELVE

### ACCOUNTINGS AND SETTLEMENTS

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#### Accountings - Statement in Lieu of Accounting - (T.C.A. 30-2-601)

Within fifteen months from the date of qualification, the personal representative shall make an accounting with the clerk of the court exercising probate jurisdiction in the county of the estate. After the first accounting and until the estate is fully administered, the personal representative shall make further accountings, annually from the date of the first accounting. Such accounting shall state all receipts, disbursements and distributions of principal and income for the accounting period and the remaining assets held in the estate and shall be verified by the oath of the personal representative before the clerk or any person authorized by law to administer oaths in such cases. The final such accounting shall state the personal representative has mailed to the creditors of the decedent who were known to or reasonably ascertainable by the personal representative. For good cause shown to the court, it may extend the time for filing the accountings. However, detailed accountings of solvent estate may be waived if:

1. The decedent by his will waived the requirements for the personal representative to make court accountings of the estate; or
2. All of the distributees of the residue file with the clerk of the court waivers excusing the personal representative from filing all court accountings.

If all court accountings are waived by the decedent's will or by the distributees as above provided and notwithstanding any other provisions of probate law to the contrary, the personal representative and distributees of the residue of a solvent estate, in which all legitimate claims against such estate have been satisfied, may file a statement with the clerk of the court at any time after the period for creditors to file claims against the estate has expired, to state substantially as follows:

3. That the personal representative has properly administered the estate, has paid or settled all claims which were lawfully presented, has paid all expenses of administration, has mailed or delivered notice of the requirement to file claims, as prescribed in (T.C.A. 30-2-306(e)), to the creditors of the decedent who were known or reasonably ascertainable by the personal representative, has filed with the clerk of the court exercising probate jurisdiction the final receipt and release from the Tennessee department of revenue evidencing payment of all Tennessee inheritance and/or estate taxes due from the state, unless waived pursuant to (T.C.A. 67-8-409(g)), has distributed the estate according to the will and obtained and filed receipts for specific bequests or has distributed the estate

according to the laws of intestate succession; and

4. That the distributees of the residue acknowledge that the estate has been properly distributed to them. (T.C.A. 30-2-601(b)(1)-(2))

Additionally, it is advisable to include in the statement that the personal representative has filed a release from TennCare in accordance with (T.C.A. 71-5-116(c)(2)),

The filing of such statement, and without the requirement of notice of an accounting by the clerk, shall relieve the personal representative and all such distributees of any requirement of law or rule to file a detailed statement, accounting or receipt of any property, money or other items received from the estate. The provisions of this section shall not apply unless all distributees of the residue of an estate file such statement in lieu of a more detailed accounting that may otherwise be required. (T.C.A. 30-2-601(c))

In connection with any accounting, it shall not be necessary for the receipt or voucher of any legatee or distributee to be sworn or otherwise acknowledged before the clerk or a notary public. (T.C.A. 30-2-601(d))

#### Representative's Duty Before Final Settlement

Upon the payment of all claims which are not contested and upon provision being made for expenses of administration, obligations on account of taxes and assessments which have not been settled, claims not due and undetermined contested claims, together with costs and expenses of litigation, the personal representative shall pay any balance remaining in his hands to the distributees or legatees entitled thereto (often residuary beneficiaries or also distributees in intestate cases) or he/she shall pay the balance into the state treasury for distributees who cannot be located. (T.C.A. 30-2-701)

The personal representative also may need to petition the court for sale of realty to pay claims. (T.C.A. 30-2-402) (See Chapter Eighteen – Sale of Real Estate in Decedent' Estates)

#### Citation to Appear and Settle

If any personal representative fails to settle accounts as prescribed in (T.C. A. 30-2-61), the clerk shall cite the personal representative to appear and settle on a given day, and the citation shall be served and returned with endorsement of service by the sheriff. At the clerk's discretion, any citation issued for the appearance of a personal representative pursuant to this section may be served by sending such citation by certified mail with return receipt to the personal representative's last known address. (T.C.A. 30-2-602)

### Avoidance or Disobedience of Citation

No executor or administrator shall neglect or refuse, for thirty days after service of a citation, or subpoena, to appear before the clerk of the probate court and settle his/her accounts. T.C.A. 30-2-613(a) Avoidance or disobedience of the citation is punishable for contempt in the probate court.

T.C.A. 30-2-602 Upon finding of contempt the judge may take those measures allowed by law, or upon indictment or presentment in the circuit or criminal court, the delinquent shall be fined not less than one dollar nor more than twenty-five dollars. T.C.A. 30-2-613(c)

The clerk shall return to the clerk of the circuit or criminal court, on or before the first day of every term of such court having jurisdiction, a list of such delinquents and the district attorney will prefer against each of them an indictment without a prosecutor. T.C.A. 30-2-613(b); T.C.A. 18-6-106

### Notice of Accounting to Parties Interested

No account of any personal representative shall be taken until the clerk of the probate or chancery court, taking the same, or the personal representative or the personal representative's attorney has served the parties interested with notice of taking the account at least five (5) days before the time fixed for taking the same. Such notice may be waived in writing by any legatee, distributee or other person interested in the estate. (T.C.A. 30-2-603)

If addresses of heirs, distributees, or other persons interested in the estate are unknown, the personal representative or the personal representative's attorney shall publish notice of the accounting in a newspaper of general circulation in the county with jurisdiction over probate proceedings.

### Taking the Settlement

The clerk may, when it seems necessary, examine the accounting party upon oath about his/her receipts and disbursements. This examination may be recorded in writing as a deposition. (T.C.A. 18-6-106) On sufficient cause shown by affidavit, the clerk may continue the settlement from time to time. (T.C.A. 30-2-605; T.C.A. 18-6-106)

The clerk shall charge the accounting party with all such sums of money as he/she has received, or might have received by using due and reasonable diligence, and shall credit him/her with reasonable compensation for services, and with such disbursements as he/she supports by lawful vouchers. (T.C.A. 30-2-606) The clerk will partially depend upon the inventory filed; he/she shall inquire into accounts of sales. The clerk should inquire as far and with as much detail so that he/she may determine that the sum of all the items with which the representative is charged are found, included, receipted, and stated

in the account. If the first settlement is not final, that fact, and the reason for it, ought to be affirmatively stated, and the balance due from the executor or administrator should be carried over as the chargeable amount in his next settlement, and so on until a final settlement is reached.

### Balance Upon Settlement

After the settlement of any administrator's or executor's account, the probate court may compel the personal representative to pay into the office of the clerk the balance found against him/her, and may on motion of the clerk, or any widow, distributee, or legatee, after twenty days' notice to such personal representative, award summarily an execution against such representative and his/her sureties for the amount of said balance, as in case of a judgment at law, and when any specific thing is to be done, the probate court may compel the representative, by an order, to perform it, and by process of contempt in case of refusal. (T.C.A. 30-2-612)

### Waiver of Notice and Receipt

In order to make one final settlement upon the first accounting to the clerk, the personal representative may ask the "interested persons" to waive notice, give receipt for their distributive share, and approve the final accounting to be filed with the clerk. (T.C.A. 30-2-603)

### Confirming the Settlement

The clerk shall report the settlement to the next term of the court, and if it appears to be regular, the judge will confirm it and order it recorded. (T.C.A. 18-6-106) The settlement when made will be prima facie evidence in favor of the accounting party. (T.C.A. 30-2-610; T.C.A. 24-5-102)

Besides the fees allowed to the clerk for his/her service, as provided in former (T.C.A. 8-21-701(28)(30)(repealed)) for taking and stating accounts, the clerk shall receive such further sum as the court of first instance or an appeal may allow, upon a confirmation of the settlement. (T.C.A. 30-2-611)

### Exceptions to Account – Appeal from Decision of Clerk

Any person interested in the estate may except to the account within a thirty day period after it has been stated by the clerk, and if dissatisfied with the clerk's decision on the exceptions, may within an additional thirty day period appeal to the court. The clerk shall, within five days after the filing of exceptions to the clerk's decision, mail copies of the exceptions to the personal representative and his/her attorney of record. (T.C.A. 30-2-607)

### Appeal from Judgment of Court

When the court having probate jurisdiction finally settles an account, any persons adversely affected by the settlement may appeal from the judgment to the court of appeals or the supreme court, as the case may be, unless the legislation establishing the probate court provides the appeal will be a trial court of general jurisdiction, in which case the judge of the trial court will hear the matter de novo. T.C.A. 30-2-609 Statute changed 2010

### Sworn Statement by Distributees and Legatees Instead of Detailed Accounting

All of the distributees of the residue may file with the clerk of the court waivers excusing the personal representative from filing all court accountings.

Notwithstanding any other provisions of probate law to the contrary, the personal representative and the distributees of the residue of a solvent estate, in which all legitimate claims against such estate have been satisfied, may file a statement with the clerk of the court at any time after the period for creditors to file claims against the estate has expired. T.C.A. 30-2-601(2)

The filing of such statement, and without the requirement of notice of an accounting by the clerk, shall relieve the personal representative and all such distributees of any property, money or other items received from the estate. The provisions of this section shall not apply unless all distributees of the residue of an estate file such statement in lieu of a more detailed accounting that may otherwise be required. T.C.A. 30-2-601(c)

## CHAPTER THIRTEEN

### SMALL ESTATES

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Legal Authority T.C.A 30-4-101, et seq.

Definitions – Unless the context clearly requires otherwise, the following terms have the meanings ascribed to them:

- (1) “Affiant” means the person executing the affidavit provided for in T.C.A. 30-4-103;
- (2) “Court” means the court then exercising probate jurisdiction in the county in which the decedent had legal residence on the date of death;
- (3) “Person” means an individual, partnership, firm, business trust, corporation or other legal entity, and shall include both singular and plural masculine and feminine, as appropriate;
- (4) “Property” means personal property, or any interest therein, other than personal property which is held jointly with right of survivorship, owned by decedent on the date of death, including insurance on the decedent’s life payable to the estate but excluding insurance on decedent’s life payable to beneficiaries other than the estate; and
- (5) “Small estate” means the estate of a decedent in which the value of the property does not exceed twenty-five thousand dollars (\$25,000.00).

Estates of less than \$25,000.00 may be administered under the Small Estates Act. A “small estate” to which the statute applies is one in which the value of the personal property does not exceed twenty five thousand dollars. To be excluded in determining the value of personal property for such purpose is that held jointly with the right of survivorship and also life insurance proceeds payable other than to the decedent’s estate. By definition real property is also not taken into account in arriving at the \$25,000.00 limitation.

In most instances, the optional method of informal administration offered by the Small Estate Act should be used only in modest, uncomplicated estates. If the decedent left only a small bank account and no significant debts, for example, the Small Estates Act could be useful in collecting assets with the least possible expenses.

The opening of a small estate does not prevent a party from obtaining letters of administration or testamentary or, after the expiration of six months, a creditor from applying to the chancery court for formal administration.

Prior to 1998 there was no method for notice to creditors, however, with respect to the estates of decedents dying after December 31, 1997, the affiant may elect to give notice to creditors under the regular procedure and thus commence the running of the claims statute. (T.C.A. 30-4-103(1) (E))

#### Contents of Small Estate Affidavit

After the expiration of forty-five days from the date of the decedent's death, provided no petition for appointment of a personal representative of the decedent has been filed in said period of time and the decedent's estate is a small estate within the meaning of this chapter, one or more of the decedent's competent, adult legatees or devisees, if a will was left, or the largest creditor proving his debt on oath, or heirs or next of kin, if no will was left, shall file with the clerk of the court an affidavit which shall set forth the following facts:

1. That the decedent was a resident of the county.
2. Whether the decedent left a will and if so, the original will shall be filed with the affidavit.
3. A list of unpaid debts, names and addresses of each creditor and the amount owed.
4. A description and value of the decedents personal property and names and addresses of all persons known to have possession of such property and a list of all insurance on the decedent's life if payable to the estate.
5. The name, age, address and relationship of any and all devisee, legatee or heir entitled to such property.
6. Whether the affiant elects to give notice to creditors as in the manner required for regular administration (this is at the affiant's discretion).

The form of the affidavit required by this section shall disclose that the affiant evidences by signature that, subject to the penalty for perjury, the affidavit is not false or misleading and that the affiant is mindful of all duties imposed upon the affiant by this chapter. No clerk or assistant shall be liable as a result of services rendered to the affiant in good faith in completing the affidavit based on information furnished by the affiant.

Upon the motion of one or more of the decedent's competent, adult legatees or devisees if a will was left, or his heirs or next of kin if no will was left, or upon its own motion, the court may, in its discretion for good cause shown, reduce the forty-five day period required by this subsection.

#### Duties of Clerk

The original affidavit is filed with the clerk, assigned a number and indexed. The will is not recorded (it is an exhibit to the affidavit and has not been proven).

The clerk shall deliver to the affiant as many certified copies of the affidavit as are requested.



The clerk sends a certified copy of the affidavit to the Commissioner of Revenue, along with all exhibits to the affidavit.

The clerk will charge the cost as listed in (T.C.A. 8-21-401).

### Bond Requirement

The affiant shall make bond with two or more sufficient sureties or one corporate surety. The amount of the bond shall equal the value of the decedent's estate to be administered under this chapter.

However, bond shall not be required if the provisions of (T.C.A. 30-1-201) would not so require.

### Closing of the File and Discharge of Bond

The affiant and the sureties on his bond may obtain discharge from liability under the bond in either of two ways:

- A. If, within two years following the filing of the affidavit, no formal probate has been filed, discharge is automatic.
- B. The court may enter an order before the two year period expires if the affiant files with the court, an affidavit that each debt has been paid, a receipt evidencing payment of inheritance tax or a certificate that no tax is due and a release from the Bureau of TennCare, if applicable.

Every person indebted to decedent's estate, or having possession of any property belonging to the estate, or acting as registrar or transfer agent of any shares of stock, bonds, notes or other evidence of ownership, indebtedness, property, or right belonging to decedent's estate shall be furnished a copy of the affidavit by the affiant, duly certified to by the clerk of the court, and upon receipt of said copy of affidavit, and upon demand of the affiant, shall pay, transfer and deliver to affiant all such indebtedness owing by and other property in possession of or subject to registration and/or transfer by, the person to whom the copy of affidavit has been delivered.

(b) Every person making payment, transfer or delivery of property belonging to a decedent's estate to the affiant pursuant to the provisions of this chapter shall be released and discharged from all further liability to the estate and its creditors to the same extent as if such payment or delivery were made to the duly appointed, qualified and acting personal representative of the decedent, and the person making such payment, transfer or delivery shall not be required to see to the application thereof or to inquire into the trust or completeness of any statement in the affidavit.

(c) If decedent left a will his property shall be distributed as provided therein, and if he left no will it shall go to his heirs as provided by law in case of other intestacies and both the affiant and the person to whom payment, transfer or delivery of any such property is made by affiant shall be and remain liable, to the extent of the value of the property so received, to unpaid creditors of the decedent and to every other person having a prior claim against the decedent's estate or prior right to any of decedent's property, and also shall be accountable to any personal representative of the decedent thereafter appointed.

(d) Affiant shall file returns and pay the tax on property in the decedent's estate, as required by Title 67, chapter 8, parts 3-5 as now or hereafter amended, revised or recodified.

(e) If any person having possession of any of decedent's property, upon receipt of a copy of the affidavit certified by the clerk, refuses to pay, transfer or deliver the property to or at the direction of the affiant, such property may be recovered or transfer and delivery thereof compelled in an action brought in any court of competent jurisdiction for such purpose upon proof of the facts required to be stated in the affidavit, and costs of such proceeding shall be adjudged against a person wrongfully refusing to pay, transfer or deliver the property.

## CHAPTER FOURTEEN

### ADMITTING FOREIGN WILL TO PROBATE AS A MUNIMENT OF TITLE TO REAL ESTATE

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Relevant Statutes and Legal Authority: T.C.A. 32-5-101 *et seq*; Pritchard's 56-57

If a will of a non-resident has been admitted to probate in another state, this Court will admit to probate the entire record from the other state, but it must be duly authenticated pursuant to the Acts of Congress. This requires the clerk to certify that the judge is the judge of the certifying court; the judge certifies that the clerk is the clerk; and the clerk certifies the record.

If necessary, the clerk of our court can furnish a form that the clerk of the foreign court can use to authenticate the record.

The petition to admit the foreign will as a muniment of title may be brought by the executor or by the attorney bringing the petition but no "live testimony" is required. The court is giving full faith and credit to the action of the foreign court in admitting the will to probate.

## CHAPTER FIFTEEN

### ADMITTING WILL TO PROBATE SOLELY AS A MUNIMENT OF TITLE TO REAL ESTATE

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Relevant Statutes and Legal Authority: T. C. A. 32-2-111

A will may be admitted to probate for the limited purpose of establishing a muniment of title to real estate if there is no personal estate to be administered.

This process avoids the necessity of appointing a personal representative of the estate; letters testamentary or of administration are not issued.

The petition should contain all the averments required under T.C.A. 30-1-117, such as names of the witnesses, that the petitioner believes the document is the decedent's last will and testament, etc.

The petitioner is expected to testify as to the fact of death, residence of the testator, the facts necessary to establish the document as being a will. Some judges also like to have some assurance that the debts have been or will be paid.

This procedure should not be used in conjunction with a small estate administration.

Everything is done in the same manner as a regular administration except that no personal representative is appointed; there is no publication for creditors, and no follow-up by the clerks. The file is closed the same day it is opened.

## CHAPTER SIXTEEN

### REOPENED ESTATES

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**Legal authority: Pritchard (7<sup>th</sup> ed.) 577**

#### Petition to Reopen An Estate

If an asset is discovered after closing an estate, it will normally be necessary to re-open the estate and re-appoint the personal representative. The petition should state all the relevant facts relating to the matter and the necessity of re-opening the estate. The attorney should also present some proof that the relevant parties were notified of the reopening of the estate.

The petition is filed by the personal representative, usually the original executor or administrator.

The bond may be waived in the same manner as allowed for the original appointment.

#### Closing a Re-Opened Estate

The re-opened estate should be closed as soon as the discovered asset has been distributed by filing a petition or motion citing that fact.

A receipt and waiver should be filed or in the alternative, an accounting.

An order should accompany the closing paperwork to close the estate.

## CHAPTER SEVENTEEN

### ESTABLISHING LOST OR SPOLIATED WILLS

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**Legal Authority: T.C.A. 32-4-106, Pritchard ss 51**

The following persons have standing to petition the Court to establish a lost or spoliated will:

- (1) any person named executor in the lost or spoliated will;
- (2) any person who would take an interest under the lost or spoliated will.

In addition to alleging all of the elements that are required for general petitions to admit wills to probate (see page 10 of this guide), the petition to establish lost or spoliated wills should contain:

- (1) a statement of belief that the will was duly executed;
- (2) a copy of the will, or if a copy of the will is not available, a statement of the will's contents;
- (3) a brief, yet complete, statement about the loss or destruction of the will and the circumstances surrounding the loss or destruction;
- (4) a list of the persons who are required to be served with process, and a notation by each name stating the persons' interest in the action, and their connection, if any, with the disappearance of the will;
- (5) a request that the will be established by the Court.

All of the following persons are required to be served with process:

- (1) Anyone who would have an interest under the last prior will,
- (2) Anyone who would have an interest under intestate succession, and
- (3) Anyone who would have an interest under the lost or spoliated will.

Whenever possible, all interested persons who are willing to do so should join in the petition either as plaintiffs or by a joinder in which they consent to the relief sought. The joinder should clearly set forth that those persons waive service of process.

Anyone who has (or who could reasonably be expected to have) knowledge about the whereabouts of the will (or about the circumstances surrounding the destruction of the will) should testify in person or by deposition.

Although it is not required by law, the Court prefers to have witnesses to the will testify in person.

The hearing on this matter must be specially set on the Court docket.

When a will cannot be found, there is strong presumption of fact that it was destroyed or revoked by the testator. It is therefore essential that there be facts presented sufficient to convince the Court otherwise.

## CHAPTER EIGHTEEN

### SALE OF REAL PROPERTY IN DECEDENT'S ESTATES

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Legal Authority: TCA 30-2-402 - 30-2-405; 30-2-418; 31-2-103;  
TRCP 4; TRCP 55.01; Pritchards 899-911.

If personal property in the estate is insufficient to pay debts and expenses, the personal representative, or a creditor whose claim has been duly filed, may file a petition in the court in which the estate is being administered, for the sale of the decedent's real estate, or so much of the land as may be necessary.

Real estate passes at the moment of death directly to the heirs of an intestate estate or to the beneficiaries of a will, unless the will expressly gives the personal representative the authority to sell the real estate.

If a petition to sell realty is filed, all heirs at law (if intestate) or distributees (if testate) must be made parties to the proceeding. Creditors should be notified but do not need to be made a party. Mortgage holders or other encumbrances are to be parties if their interest would be affected by the relief sought.

The petition should specify particularly the names of the creditors, the amounts of the debts or demands of each creditor and the amounts remaining as unpaid, and describe the land to be sold. The petition should also pray for the sale of the decedent's real estate, or a portion of the real estate, that would prove least injurious to the heirs and legal representatives, and be sufficient to satisfy the debts and demands as set out in the petition.

A guardian ad litem must be appointed for any minor or disabled person. The guardian ad litem may waive notice but may not waive the rights of the minor or disabled person.

Parties must be served in accordance with T.R.C.P. Rule 4 as in any other case. If any party fails to respond, the petitioner must apply for a default judgment to be entered against the party per T.R.C. P. Rule 55.01.

No notice of insolvency or other notice to creditors need precede the filing of the petition to sell real estate. However, the attorney, before presenting the petition to the judge, must obtain a report from the clerk stating that the personal estate is insufficient for the payment of the debts of the estate, administrative expenses, inheritance taxes, and the estate taxes. The clerk's report must be confirmed by the judge. The clerk shall notify the devisees or heirs and other interested parties that the court will conduct a hearing to determine the advisability of selling real estate and to authorize the sale.

At least one (1) appraisal of a qualified real estate appraiser as to the fair market value of the property should be presented to the court. The guardian ad litem, if appointed, may obtain a second appraisal if there is a substantial difference between the proposed sale price and the

appraised value.

If upon the hearing, the judge is satisfied that the estate is insolvent, or that the sale of real estate is necessary, the judge may order the sale of the real estate in whole or in part. The sale may be by public or private means and the court may direct or approve the terms and conditions of the sale.

The statute does not require an order of reference but it can be very helpful in some cases. This is particularly true if one of the parties should contest the sale or if there is some question as to the amount of unpaid debts.

If the real estate is located in Tennessee but outside the county of administration, the sale shall be held in the county in which such land lies. A certified copy of the order confirming the sale or a deed should be recorded in the Office of the Register of Deeds in the county where the real estate is located and the expense of the sale and the costs of recording may be charged to the estate.



## CHAPTER NINETEEN

### REQUIREMENT REGARDING TENNCARE

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#### Release from TennCare

If the decedent is over fifty five (55) years of age, a release from the bureau of TennCare must be submitted to the clerk evidencing one of the following: (T.C.A. 71-5-116(c)(2)(A)-(C))

1. Payment of all medical assistance benefits, premiums, or other costs due from the estate under law;
2. Waiver of the bureau's claims; or
3. A statement from the bureau that no amount is due.

#### Duties of Personal Representative

T.C.A. (71-5-116(d)(1)(B) and (D))

1. The personal representative, within sixty (60) days of the date of issuance of letters testamentary or letters of administration, shall notify the bureau of TennCare of the death of any individual over the age of fifty five (55) in a format to be specified by the bureau. (T.C.A. 71-5-116(d)(1)(D)). A copy of the TennCare form can be found in the appendix, as well as on the Bureau of TennCare's website.
2. The personal representative shall provide the notice to creditors specified in (T.C.A. 30-2-306), to the Bureau of TennCare, if the decedent was a TennCare recipient.
3. If the notice to creditors is required to be provided as set forth above, an affidavit shall be filed with the court, by the personal representative, pursuant to (T.C.A. 30-2-301(b)(3)).

#### TennCare's Intent to Recoup

It is the legislative intent of subdivision (T.C.A. 71-5-116(d)(1)), that after the date of death, the bureau of TennCare strive vigorously to recoup any TennCare funds expended for a decedent during the decedent's lifetime. (T.C.A. 71-5-116(d)(2)). Exceptions to this intent are when there is a surviving spouse or a minor child. Or in the event that a child, who before or after reaching the age of majority, is blind or permanently disabled, and if TennCare and the personal representative agree, or if the court finds that such repayment would constitute an undue hardship to the blind or disabled child. (T.C.A. Sec. 71-5-116(c)(1)).

### TennCare Request for Release Form

The form and the form's instructions shall be available in the office of any clerk exercising probate jurisdiction, as well as available on the bureau of TennCare's website. (T.C.A. 71-5-116(e))

### Classification of TennCare Claim

T.C.A. 30-2-317(a), sets forth the classifications of claims regarding the priority of payments. Claims for TennCare fall under the third class, pursuant to (T.C.A. Sec. 71-5-116(f)).

## CHAPTER TWENTY

### MISCELLANEOUS PROVISIONS

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#### Payment of Bank Account by Bank Under \$10,000.00

Legal Authority T.C.A. 45-2-708

Payment, when no executor or administrator qualifies, notwithstanding the provisions of T.C.A. 30-2-317, where no executor or administrator of a deceased depositor has qualified and given notice of such person's qualifications to the bank, the bank may, in its discretion, and at any time after thirty (30) days from the death of the depositor, pay out of all accounts, maintained with it by the depositor in an individual capacity, all sums which do not exceed ten thousand dollars (\$10,000.00) in the aggregate:

- (1) To the executor named in any will known to the bank; or
- (2) In the absence of knowledge of a purported will naming a surviving executor to:
  - (A) A creditor for expenses of the funeral;
  - (B) A creditor for the expenses of the last illness;
  - (C) The surviving spouse; and
  - (D) The next of kin.

In the case of conflicting claims, the order of priority shall be that set out in T.C.A. 45-2-708.

(a) The receipt of any guardian, administrator or executor, duly appointed or qualified by the courts of this state, or any other state, acknowledging the payment or transfer of funds, standing in the name of the person whose estate such fiduciary represents, in the form of deposits in banking institutions, shall be a good and sufficient acquaintance for such payment or transfer and shall constitute a valid defense in favor of the banks against the demands or claims of all parties.

(b) No bank shall be liable for damages, penalty or tax by reason of any payment made pursuant to this section.

#### Deposit of Will with Probate Court

A testator who is living or some person authorized by the testator in writing by an order, duly proved by oath of a subscribing witness, may deposit his/her will with the clerk of the probate court by following the procedure set out in T.C.A. 32-1-112.

Delivery of Will to Clerk

Legal Authority T.C.A. 32-1-113

Mailing or delivery of will to personal representative or clerk of court.

- (a) any person or corporation who has possession of or discovers a written instrument purporting to be the last will and testament of a decedent shall mail or deliver that instrument to the personal representative named therein as soon as the person or corporation has knowledge of the death. A photographic copy of such instrument shall be mailed or delivered to the clerk of the court having probate jurisdiction in the county of the decedent's residence.
- (b)
  - (1) If the personal representative, or personal representative's address, is not known, is deceased or is not eligible to serve;
  - (2) If the instrument does not name a personal representative;
  - (3) If the personal representative declines to serve; or
  - (4) If it appears that there is no estate that will require administration; then the person having possession of the original instrument shall mail or deliver it to the clerk.
- (c) The receipt by the personal representative or the clerk shall relieve such person of further responsibility as to possession of the instrument.
- (d) The clerk of the court shall have no responsibility to perform any acts regarding the probate of the will and shall not accept any claims for filing against the estate unless and until such time as the personal representative or other interested party files proper pleadings to initiate such action.

**CHAPTER TWENTY-ONE**  
**DISPOSAL OF DORMANT CASES**

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Authority: T.C.A. 30-2-324 (eff. 7/1/11)

The State Legislature has provided Courts with a method by which to clear dormant probate cases from the active docket by dismissing them without prejudice IF:

- 1) No order of disposition has ever been entered;
- 2) The case has been open for a period of time in which disposition could have occurred, but in no event less than 18 months from the order opening the estate; and
- 3) The administration of the estate remains incomplete.

Notice must first be sent to the last known address of the Personal Representative of the estate, the attorney for the estate, and any beneficiaries of the estate. (If TennCare has filed a claim against the estate, it is also a good idea to send a copy of the notice to them.)

After allowing a reasonable amount of time for any answer or response to the notice to be filed, the Court may enter an Order, without liability to the clerk of the county of administration, dismissing the probate case without prejudice.

A dismissal pursuant to this section shall operate only to close the administration and not to invalidate any previous Order of the Court in the proceeding.

## GLOSSARY

abatement	reduction of amount of one or more legacies because of insufficient funds for full payment to testator's legacies or other debts
accounting	the record of all transactions, debts and credits of estate which is prepared and given to probate court clerk upon executor's or administrator's completion of fiduciary duties
ad litem	for the purpose of a suit; an administrator ad litem is one appointed by the court to prosecute or defend a suit on behalf of decedent's estate because either there is no executor or administrator or executor or administrator is adversely interested
ademption	two types: the extinction (1) or the satisfaction (2), of legacy by testator's act by which he indicates either an intention to revoke the bequest or revocation of bequest; often implied by the law even though act did not amount to an express revocation; which is to say disposing of a part of the estate so as to make implementing the will as to a certain party impossible
administrator	person appointed by probate court to administer and settle an intestate estate
advancement	money or property given by parent to child in anticipation of the share to be inherited by the child from the parent's estate and intended by parent to be deducted from his portion of estate; in Tennessee, applies in both intestacy and partial intestacy
adverse	situation of a person who is entitled to notice of filing by the interest executor or administrator of a final report and prayer for discharge
affidavit	statement or declaration of person reduced to writing and sworn to before an officer who has authority to administer oaths, then signed by affiant and written thereon by the officer that the statement was sworn to before him and signed by officer
alien	pertaining to country out of the United States; to be distinguished from "foreign" which refers to law of other states than home state; example: Mexican law is "alien"; Kentucky law is "foreign"
ancestral estate	real property transmitted by descent and not by purchase
ancillary	administration in state other than where the decedent was domiciled but administration where the decedent had property
animus testandi	a testifying mind; denotes state of mind having an intention or serious purpose to make a definite will

appeal	removal of a cause from a court of inferior jurisdiction to one of superior jurisdiction for purpose of rehearing or review on both law and fact
assets	property of deceased, real or personal, tangible or intangible, which can be made available for or appropriated for payment of debts or otherwise discharged by the executor, administrator or heirs; includes lawsuits that may be revived
attestation	clause wherein witnesses certify that instrument has been signed before them and describe manner of signing; in Tennessee, often the following: “We the undersigned attest that the testator has indicated this document is his will, that we have witnessed him sign and that we now sign in testator’s presence and in presence of each other”
bequest	gift by will of personal property; often distinguished from a “devise” which is a gift of realty
bond	surety bond; where a company or person contracts to be answerable for default, debt or miscarriage of executor or personal representative
c.t.a.	cum testament annexeo; with will annexed; said of an administrator named in will who cannot or will not act or else the will named no executor
capacity	an intelligent perception and understanding of disposition made of property
certiorari	an appellate writ and proceeding for re-examining an action of an inferior court
chancery	a constitutional court of equity in Tennessee
chattels	goods; often personal property other than money
child	an immediate descendant; as used in T.C.A. Title 31, includes any individual entitled to take as a child by intestate succession from parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant
children	technical word importing on immediate descendants and may be construed not to be equivalent to “heirs” and in some cases may exclude illegitimate and adopted children
chose in action	a right to recover damages reparation by suit at law; a right to personal things of which the owner has not possession but right of action for possession
circuit	the courts presided over by judge who journeys from one court to another or a court equivalent in jurisdiction to circuit court
claim	assertion of debt due or of some other right against estate’s assets

codicil	(little will) an addition to or qualification of one's last will and testament; must meet same attestation and signing or else holographic requirements as any other will
collateral	a blood relationship other than lineal; two persons have a common ancestor; example: brothers (common ancestor is father or mother), cousins (common ancestor is common grandparent), uncles and aunts to nephew and nieces (one's parent is the other grandparent)
commissioner and receiver	person designated by law or court order to perform special function in a matter before the court, often to take depositions of witnesses and to receive and preserve property on hand in litigation
common	form of probate; proceeding to prove will begun by executor, a person interested or an administrator seeking admission of offered instrument to record as a valid will (See solemn form)
consanguinity	relation of having blood of some common ancestor; may be lineal or collateral
contest	attempt to defeat probate of instrument offered as will, including resistance to probate and including action or proceeding to set aside probate
creditor	general creditor, a secured creditor, a lien creditor or any representative of creditors, including a receiver in equity, a trustee in bankruptcy and an executor or administrator of an insolvent decedent's estate
d.b.n.	de bonis non; of goods not administered; said of administrator appointed by the court upon there being a vacancy in office of executor
de novo	anew, over again, said of appellate trials where both law and facts are tried anew
devisavit	(the instrument be not his will) an issue of fact in contest as to vel non whether a will in question was made as testator's own responsible act and intention
devise	traditionally to give real estate by will; when used as noun in T.C.A., Title 31, devise refers to testamentary disposition of real or personal property; when used as a verb in T.C.A., Title 31, devise means to dispose of real or personal property by will
devisee	any person designated in will to receive a devise; in the case of a devise to an existing trust or trustee, or to trustee or trust described by a will, the trust or trustee is devisee and beneficiaries are not devisees
distribute	to apportion personal property of decedent's estate to persons entitled thereto



domicile	usually refers to deceased's county of residence at death, but not necessarily; a domicile is deceased's permanent home from which he has no intention of moving, so that a person may have his residence in one place and his domicile in another
elective share	in probate, the right of surviving spouse to elect whether to take under will or under status of support or spouse's distributive share
escheat	right of state to ownership of estate to which no persons are legally entitled to make claim
estate	property left by decedent; the word "estate" in a will, however may have some other meaning that may be gathered or affected by other clauses and terms of will itself
execution	of a will; the signing and, if necessary, proper attestation by witnesses
executor	person named by testator in his will to carry out directions and requests in his will and pay all debts of estate
exoneration	a release from liability; removal of burden, charge or duty
federal taxes	taxes imposed by federal government including income, estate and gift taxes
foreclosure	enforcement of deed of trust or mortgage by one having rights and liabilities of the mortgagee to be applied to; costs of suit, mortgage debt, interest thereon, junior encumbrances and the owner, in that order
foreign	state other than this one; to be distinguished from "alien", a country other than the U.S.
gift causa	gift of personal property made in anticipation of speedy death and mortis intended to operate as transfer if death ensues and does so operate if delivered and death does ensue
guardian	person to whom the law has entrusted custody and control of estate or person or both of an infant, minor or incompetent person
heirs	persons who are entitled under status of intestate succession to property of decedent
hodgepodge	(also hotchpot), grouping of values of property given away by decedent by will and by advancement in his lifetime, so that the whole value is divided equally, each share being charged with any value already received; though the value of an advancement is counted in the hodgepodge, no advancement can be repossessed to the estate
holographic	a will that is entirely written and signed by testator in his own handwriting

homestead exemption

in Tennessee, a right to life estate of \$5,000 in homestead; exempt from claims of creditors, restricted in its conveyance or encumbrance which may be made out of decedent's lands to surviving spouse and minor children

incorporation by reference

doctrine that will may validly incorporate into itself any written paper which is in existence at the time of execution of will by referring to written paper, in a manner showing intent that property pass according to document. This written paper is not probated.

inheritance tax

tax on the right to succession to property by legacy, devise or intestate succession; not tax on property itself, but on right to acquire it by descent or testamentary gift

insolvent

in probate law, the insufficiency of entire property and assets of individual to pay his debts

integration

process of embodying all documents of a testamentary nature into one body so that single act of execution validates the whole; when loose stack of unattached papers is offered for probate, a question might be raised whether the papers were properly integrated at execution and whether testator's intent applied to all of them

interested person

(1) in probate, to designate persons eligible to contest a will; one whole interest may be impaired or defeated by probate of the will or may be benefited by its being set aside; (2) in probate, to designate persons eligible to propound a will

inter vivos trust

a trust which becomes effective during the life of the settler (grantor); from one living person to another

intestate

a person who has died without leaving a valid and operative will

inventory

a full, true and perfect list made by an executor or administrator of all assets of the decedent and returned to and sworn to before the clerk, a notary public or any other person authorized to give oaths

issue

all of a person's lineal descendants of all generations, with relationship of parent and child at each generation being determined by definitions of parent and child contained in Title 31, T.C.A.

joint will	a will where same instrument is made the will of two or more persons and is jointly signed by them and disposes of property jointly held by them (See also mutual will and joint-and-mutual wills)
joint-and-mutual will	a will jointly signed by two or more persons and disposing of property held both individually and jointly by them by giving the property of each testator to the other by reciprocal provisions
jurat	a certificate stating the fact that an affidavit was made and sworn to before a stated officer at a stated time and place
jurisdiction	the right to adjudicate on the subject matter in a given case
legatee	one to whom personal property is bequeathed in a will
letters of administration	letters granted to a person by probate court and authorizing therein the person named to act as administrator of the estate of a person who has died intestate
letters testamentary	letters granted to personal representative named in will of a person who has died testate
lineal heirs	heirs related to deceased in a direct ascending or descending line, as children and grandchildren, parents and grandparents
minor	person who has not reached the age of 18 years
moiety	half of anything
muniment of title	documentary evidence of title; instruments showing ownership of land by inheritance
mutual wills	will which gives property of each testator to the other by reciprocal provisions
next of kin	nearest degree of blood relations, taking person's estate
nuncupative	a will that is not in writing and exists only when the testator in imminent peril of death declares his will orally before two disinterested persons who reduce the will to writing and attest it within 30 days and probate it within six months; limited to \$1,000 in personalty except military in time of war, \$10,000. T.C.A. 32-1-106 does not revoke or change an existing written will

order of revivor

a complaint filed to revive the proceedings in a suit because of some circumstance which has caused the suit to be abated (as from death of administrator)

parent includes for purposes of Title 31, T.C.A., (law of descent and distribution) any person entitled to take or who would be entitled to take if the child died without a will, as a parent under Title 31 by intestate succession from the child whose relationship is in question and excludes any person who is a stepparent, foster parent or grandparent

pendente lite pending the suit; for the period of time until the suit is brought and concluded

per capita equally based on number of takes

personal representative

includes the executor, administrator, successor, personal representatives, special administrator and persons who perform substantially the same function under the law governing their status

per stripes by right of representation of a deceased ancestor

petition a claim or pleading filed with a court

plea in equity, a special answer relying on one or more reasons as to why the suit should either be dismissed delayed or barred; often any pleading

pretermit to pass by; a testator who fails to mention his child in the will pretermits the child; Tennessee statute protects rights of pretermitted child who was not born or adopted at the time of the writing of the will (T.C.A. 32-3-103)

probate court procedure by which a will is proved to be valid or invalid; though in current usage this term has been expanded to generally refer to legal process wherein the estate of a decedent is administered

proferit (he offers), an offer made in pleading to the court to produce a deed or other document and usually actually shown in court to all parties but in fact retained in custody of the offeror which includes property, both real and personal, or any interest therein and means anything that may be subject of ownership

propound to offer for consideration

public administrator

a public officers who administers the estates of decedents where no one else qualifies to act as a personal representative

publication communication by the testator to attesting witnesses at the time they attest of testator's intention that the instrument which they are called upon to attest shall take effect as his will

ratable share	merely proportionate share of a fund or other body of property according to the interest of each person concerned; example: 1/3 to each child of equal interest where there are three children; (2) 1/3 each to two children where there were three total, but one deceased, and ½ of 1/3 (i.e. 1/6) to each of two total children of deceased child
real property	an interest in land; an interest in such things as are permanent, fixed and immovable which are not annexed to the premises or cannot be moved from the place in which they subsist
remand	the return of a case by an appellate court to the trial court for entry of a proper judgment or for further proceedings or for a new trial
renunciation	a disclaimer of interest by succession made after the ancestor's death which, if effective, relates back to the time of death and avoids the succession
representative	the principle upon which the issue of a deceased person take or inherit the share of an estate which their immediate ancestor would have taken or inherited, if living
residuary	that which is left after other legacies and devises have been paid and all legal claims against the estate discharged
revocable	subject to being canceled, withdrawn, nullified
revival	act of giving a testamentary effect to a will previously revoked; revival is usually done by re-execution or republication of the will or destruction of a codicil which revoked will
revivor	see "order of revivor"
scire facias	a writ founded upon a matter of record and requiring the party served to show cause why the party bringing it should not have advantage of the record; in probate, often used in relation to sale of realty to pay debts
solemn form	a proceeding in probate begun by executor or interested party or an administrator seeking admission of an instrument to be recorded as a valid will and notifying all interested parties of the proceeding so that they may have opportunity to contest its validity if they wish
subscribing	signing at the end of instrument
testament	disposition of personal property to take effect upon death
testator	a deceased person who died leaving valid will
valuable papers	papers considered worthy of being preserved as records of facts purported to be stated and perpetuated in them

will a legal declaration of a person's intention which he desires to be performed after his death; person must be 18 years of age (T.C.A. 32-1-102)

year's support statutory right of spouse or an intestate decedent or a spouse who dissents from a decedent's will, for a reasonable allowance in money out of the estate for his or her maintenance during the period of one year after death of the spouse, according to his or her previous standard of living, taking into account the condition of the estate of the deceased spouse; if no spouse survives, the year's support goes to the minor children (T.C.A. 32-2-102)

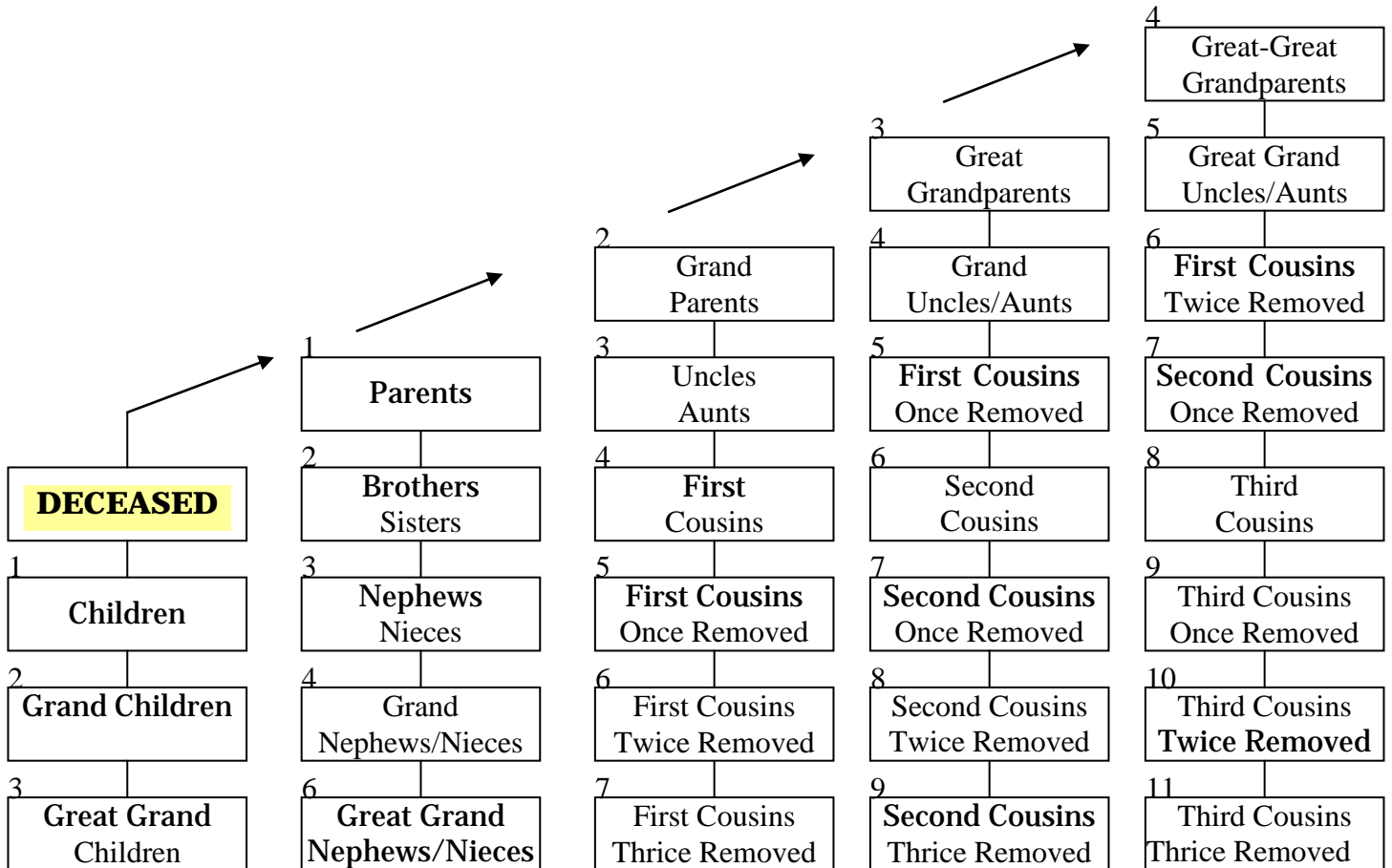
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Filing Claims Against Estate-4 Months	30-2-306 to 307
Financial Records Privacy Act	45-10-101 to 118
Foreign Wills, Execution and Recording	32-1-107 & 32-5-101 to 110
Fraudulent Conveyance to Defeat Spouse's Share	31-1-105
Gift to Minor's Act (TUTMA)	35-7-101 to 126
Guardianships	34-1-101 to 131; 34-2-101 to 106
Holographic Wills	32-1-105 & 32-1-110
Homestead	30-2-201 & 26-2-301; Tenn. Const. art. XI, ss 11
Inheritance Tax Waiver	67-8-409
Insolvent Estate	30-5-101 thru 30-5-105
Insurance Free from Claims or Debts	56-7-201
Interpretors Cost	TRCP 54.04 & TRE 604
Intestate Succession (order of descent)	31-2-104
Inventory	30-2-301

Joint Accounts	45-2-703 & 45-2-704
Joint & Mutual Wills	32-3-107(b)
Jurisdiction of Probate Court	16-16-107, 16-16-201, 16-16-202
Jurisdiction for Chancery to Appt Admin	30-1-301
Jury Trial on Demand –for Claims	30-2-313
Living Wills (TRNDA)	32-11-101 to 112
Lock Box	45-2-901 & 67-8-418
Lost or Spoliated Wills	32-4-106; Pritchard ss 51
Minor’s Funds Under \$20,000	34-1-104
Muniment of Title	32-2-111
Notice of Accounting	30-2-603
Notice to Beneficiaries of Inventory	30-2-301
Notice to Creditors (4 Months)	30-2-306
Notice to Personal Rep. of Claim Filed	30-2-313 (a)
Nuncupative Will	32-1-106 & 32-2-106
Partition Suits	29-27-101 to 219
Payment of Claims Priority	30-2-317 to 319
Payment when no representative Qualifies	45-2-708; 45-3-514; 45-4-405
Pending Lawsuits (order of reviver)	30-2-320
Petition to Open Estate	30-1-117
P.O.D. Accounts	45-2-704
Power of Attorney	34-6-101 to 310
Powers of Executor Incorporated by Reference	35-50-110
Proof of Will	32-2-104
Public Guardianships for Elderly	34-7-101 to 105
Receipt & Waiver, Closing Estate	30-2-601; 30-2-707
Remove Disability of Minority	29-31-101 to 29-31-105
Reopening of bidding (10%Rule)	35-5-110
Residence of Fiduciaries	35-50-107
Residences (2) of Decedent	Pritchards- 329-7 <sup>th</sup> Edition
Safe Deposit Boxes	67-8-418 & 45-2-901
Sale of Decedent’s Personalty	30-2-303
Sale of Decedent’s Realty	30-2-401 406; 30-2-418
Scire Facias Against Estate Debtors	30-2-706
Service of Process (non-resident representative)	30-1-104
Simultaneous Death Act (USDA)	31-3-101 to 107; 31-3-120
Small estates, Administration of	30-4-101 to 105
Solemn Form Probate	32-5-103 and Pritchard ss 342-350
Tenn Care (Lien)	71-5-116 (c) (2)
Treasurer of State to Receive (see Escheat at 31-6-101)	30-2-702 & 66-29-101
V.A. Guardianship (UVGA)	34-5-101 to 122
Wages etc. Owed Decedent to \$10,000	30-2-103
Waiver of Bond	30-1-201 & 35-50-111
Wills (2)	Pritchards-258-7 <sup>th</sup> Edition
Will Deposited with Court	32-1-112
Wrongful Death Proceeds	20-5-106
Year’s Support	30-2-102



# Degrees of Family Relationships



## Relationships by Marriage (Affinity)

A relationship by blood is also referred to as being related by consanguinity. A relationship by marriage is sometimes referred to as being related by affinity.

A husband and wife are related in the first degree by marriage. For other relationships by marriage, the degree of relationship is the same as the degree of underlying relationship by blood. Example: John and Steve are brothers and are therefore second-degree relatives by blood. John's wife, Linda, is related to Steve in the second degree by marriage.



\_\_\_\_\_ **COUNTY CHANCERY COURT**

**APPOINTMENT TIME**

\_\_\_\_\_

**PROBATE INFORMATION REQUEST FORM**

**Name of Deceased:** \_\_\_\_\_

**Date of Death:** \_\_\_\_\_ **Age at Death:** \_\_\_\_\_

**Will:** \_\_\_\_\_ **Excused from Bond:** \_\_\_\_\_

**Is Will Self Proving** \_\_\_\_\_

**Amount of Bond:** \_\_\_\_\_

**Real Estate Value:** \_\_\_\_\_ **Personal Value:** \_\_\_\_\_

**Personal Representative:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Attorney:** \_\_\_\_\_

**Publication:** \_\_\_\_\_

**Number of Extra Letters Needed:** \_\_\_\_\_

**Costs for Probate**

**Clerk and Master's Office - \$** \_\_\_\_\_ **Publication \$** \_\_\_\_\_

**Extra Letters - \$** \_\_\_\_\_ **each**

IN THE CHANCERY COURT FOR \_\_\_\_\_ COUNTY, TENNESSEE

**NOTICE OF RETURN OF CLAIM**

In the Matter of the Estate of: \_\_\_\_\_

Case No.: \_\_\_\_\_

Claimant: \_\_\_\_\_

-----  
Your claim is returned for one of the following reasons. Should you have any questions, contact our office at \_\_\_\_\_.

A fee of \$11.00, payable to the Clerk and Master, is required at the time a claim is filed. [T.C.A. 8-21-401(c)(1)(A)]

Each claim must be filed in triplicate. [T.C.A. 30-2-307(c) and 30-2-308]

Notarization of claim is required. [T.C.A. 30-2-307(b)]

Other:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Deputy Clerk and Master

IN THE PROBATE COURT OF \_\_\_\_\_ COUNTY, TENNESSEE

IN THE MATTER OF:

The Estate of \_\_\_\_\_, deceased Case No.: \_\_\_\_\_

AFFIDAVIT OF PERSONAL REPRESENTATIVE  
PURSUANT TO T.C.A. §67-8-409

**(Waiving Tennessee Inheritance Tax Return)**

The undersigned Personal Representative of the Estate of

\_\_\_\_\_, deceased, states under penalty of perjury as follows:

That the gross estate of the above deceased does not exceed \$100,000.00 in fair market value and that to the best of the knowledge, information and belief of the Affiant the decedent did not make any gifts during deceased's lifetime in excess of the maximum allowable free of tax under T.C.A. §67-8-104.

That the undersigned Personal Representative hereby prays that the Court waive the filing of a Tennessee Inheritance Tax return by the Personal Representative and the filing of a Non-Taxable Certificate with his/her Petition to close the estate.

Wherefore, Petitioner prays this Affidavit be accepted in lieu of a Non-Taxable Certificate from the Tennessee Department of Revenue.

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, being duly sworn, do hereby make oath and state that I am the Affiant in the forgoing Affidavit, and that the facts stated herein are true to the best of my knowledge, information and belief.

Sworn on and subscribed to before me this the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

IN RE:  
The estate of

NO P

---

TO:

NOTICE

Please take notice, pursuant to T.C.A. 30-2-602, that on the \_\_\_\_ day of \_\_\_\_\_, 2012, at 9:00 am, in the Chancery Courtroom of \_\_\_\_\_ County, Tennessee, you are required to appear and settle the above referenced estate.

This the \_\_\_\_ day of \_\_\_\_\_, 2012.

---

CLERK AND MASTER

CERTIFICATE OF SERVICE

I do hereby certify that a true and exact copy of the foregoing Notice has been forwarded by U.S. Mail postage, or hand delivery to  
This \_\_\_\_ day of \_\_\_\_\_, 2012.

---

Clerk and Master

IN THE CHANCERY/PROBATE COURT OF \_\_\_\_\_  
COUNTY, TENNESSEE

IN THE MATTER REGARDING:  
THE ESTATE OF \_\_\_\_\_  
PROBATE NO. \_\_\_\_\_

**NOTICE AND ORDER CLOSING ESTATE**

This matter is before the Court on the Court's own motion.

It appears to the Court that no action has been taken in the above-captioned Estate since \_\_\_\_\_, and it appears that the Estate should be closed. Unless anyone can show good cause why the court should not do so within 30 days from the date of this Order, the Court will close this Estate and terminate the \_\_\_\_\_ appointment without further accounting, notice, report, hearing or order.

Neither the \_\_\_\_\_ nor any other person is discharged from any liability to this Estate.

So Order on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Chancellor

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and exact copy of the foregoing Order Closing Estate has been forwarded either by hand delivery or by U.S. Mail postage prepaid to \_\_\_\_\_.

This \_\_\_\_\_ day of June, 2012.

\_\_\_\_\_  
Clerk and Master

IN THE CHANCERY COURT OF \_\_\_\_\_ COUNTY, TENNESSEE:

IN RE:

\_\_\_\_\_,  
DECEASED

NO P

### ORDER CLOSING ESTATE

This cause came before the court on a sworn Affidavit as to a Small Estate. It appears that all business associated with this small estate affidavit has been concluded and the affiants desire that this estate be closed.

It is therefore ordered that this estate be closed.

This \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
CHANCELLOR

### CERTIFICATE OF SERVICE

I do hereby certify that a true and exact copy of the foregoing Order has been forwarded either by hand delivery or by U.S. Mail postage prepaid to all parties or counsel of record at their last known address.

This \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Clerk and Master



**CHANCERY COURT OF \_\_\_\_\_ COUNTY, TENNESSEE**

IN THE MATTER OF THE ESTATE OF \_\_\_\_\_, DECEASED  
Resident of \_\_\_\_\_ County, Tennessee

NO. P-\_\_\_\_\_  
**PROBATE**

\_\_\_\_\_, Tennessee \_\_\_\_\_

Date of Death: \_\_\_\_\_

Executrix: \_\_\_\_\_

**RE-ISSUED  
LETTERS TESTAMENTARY**

Whereas, it appearing to this Court that the above named deceased person has made a Last Will and Testament appointing Co-Executors. The previous Letters were issued to \_\_\_\_\_ and \_\_\_\_\_. By Order filed on \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ was removed as Co-Executor and \_\_\_\_\_ was approved as the sole Executor. The Executrix having qualified according to Law;

It is, ORDERED that Re-Issued Letters Testamentary are hereby issued to the above named Executrix being now therefore empowered to enter into and take possession of all property rights and credits of this deceased person and to continue administration of this Estate as required by Law.

IN WITNESS WHEREOF, I have issued these Letters Testamentary, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

*CLERK & MASTER*

STATE OF TENNESSEE  
COUNTY OF GILES

I do solemnly swear that I will honestly and faithfully discharge the duties imposed on me according to the terms of the Last Will and Testament and by Law, to the best of my ability, so help me God.

\_\_\_\_\_  
EXECUTRIX

Subscribed and sworn to before me, this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_\_.

*CLERK & MASTER*

**CERTIFICATE**

I, Clerk and Master of this Court, certify that: (i) this is a Court of Record; (ii) the above is a true, full and correct copy of the Letters Testamentary issued by the Court in this Estate; (iii) these Letters are still in full force and effect as of this date; and (iv) these Letters appear of record in this Court's Probate Minute Book 8, Page \_\_\_\_\_.

Witness my hand and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

*CLERK & MASTER*

\_\_\_\_\_  
County Courthouse

CHANCERY COURT OF COUNTY, TENNESSEE

IN THE MATTER OF THE ESTATE OF \_\_\_\_\_, DECEASED

NO. P- \_\_\_\_\_ PROBATE

Resident of \_\_\_\_\_ County, Tennessee

\_\_\_\_\_ Tennessee \_\_\_\_\_

Date of Death: \_\_\_\_\_

Administratrix C.T.A.: \_\_\_\_\_

**LETTERS OF ADMINISTRATION, C.T.A.**

Whereas, it appearing to the Chancery Court that the above named deceased person left a written Will, which has been exhibited in this Court and duly proven in as the Law directs, and application being made to have Letters of Administration with Will Annexed granted on the said Estate, and the Court having appointed the above named Administratrix, C.T.A., and upon her qualifying as directed by Law;

It is, ORDERED that Letters of Administration with Will Annexed are hereby issued to the above named Administratrix, C.T.A., being now therefore empowered to enter into and take possession of all property rights and credits of this deceased person and to administer this Estate as required by Law.

IN WITNESS WHEREOF, I have issued these Letters of Administration with Will Annexed, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CLERK & MASTER

STATE OF TENNESSEE  
COUNTY OF GILES

I do solemnly swear that I will honestly and faithfully discharge the duties of Administratrix, C.T.A., according to the terms of the Last Will and Testament and by law, to the best of my knowledge and ability. So help me God.

ADMINISTRATOR C.T.A.

Subscribed and sworn to before me, this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CLERK & MASTER

**CERTIFICATE**

I, Clerk and Master of this Court, certify that: (i) this is a Court of Record; (ii) the above is a true, full and correct copy of the Letters of Administration, C.T.A., issued by the Court in this Estate; (iii) these Letters are still in full force and effect as of this date; and (iv) these Letters appear of record in this Court's Probate Minute Book \_\_\_ Page

Witness my hand and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CLERK & MASTER

\_\_\_\_\_  
County Courthouse  
(Address)

CHANCERY COURT OF \_\_\_\_\_ COUNTY, TENNESSEE

IN THE MATTER OF THE ESTATE OF \_\_\_\_\_  
DECEASED

NO. P-\_\_\_\_\_  
PROBATE

Resident of \_\_\_\_\_ County, Tennessee  
Date of Death: \_\_\_\_\_  
Administrator D.B.N.: \_\_\_\_\_

**LETTERS OF ADMINISTRATION, DE BONIS NON**

Whereas, it appearing to the Chancery Court that the above named deceased person has died testate, her estate being opened for probate on \_\_\_\_\_, 20\_\_\_\_, with \_\_\_\_\_ being appointed Executor. \_\_\_\_\_ died on \_\_\_\_\_ 20\_\_\_\_ and now the Court having appointed \_\_\_\_\_ as Administrator, D.B.N., upon him qualifying as directed by Law;

It is, ORDERED that Letters of Administration, De Bonis Non are hereby issued to the above named Administrator, D.B.N., being now therefore empowered to enter into and take possession of all property rights and credits of this deceased person and to administer this Estate as required by Law.

IN WITNESS WHEREOF, I have issued these Letters of Administration. D.B.N., this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CLERK & MASTER

STATE OF TENNESSEE  
COUNTY OF GILES

I do solemnly swear that I will honestly and faithfully discharge the duties of Administrator, D.B.N., according to the law and to the best of my knowledge and ability. So help me God.

\_\_\_\_\_  
ADMINISTRATOR, D.B.N.

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CLERK & MASTER

**CERTIFICATE**

I, Clerk and Master of this Court, certify that: (i) this is a Court of Record; (ii) the above is a true, full and correct copy of the Letters of Administration, d.b.n., issued by the Court in this Estate; (iii) these Letters are still in full force and effect as of this date; and (iv) these Letters appear of record in this Court's Probate Minute Book \_\_\_\_\_, Page \_\_\_\_\_.

Witness my hand and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CLERK & MASTER

\_\_\_\_\_  
County Courthouse

CHANCERY COURT OF \_\_\_\_\_ COUNTY, TENNESSEE

IN THE MATTER OF THE ESTATE OF \_\_\_\_\_ DECEASED

NO. P- \_\_\_\_\_  
PROBATE

Resident of \_\_\_\_\_ County, Tennessee  
\_\_\_\_\_, Tennessee \_\_\_\_\_

Date of Death: \_\_\_\_\_

Administrator D.B.N.: \_\_\_\_\_

**LETTERS OF ADMINISTRATION, DE BONIS NON**

Whereas, it appearing to the Chancery Court that the above named deceased person has died, his Will being probated on \_\_\_\_\_ and closed on \_\_\_\_\_ by \_\_\_\_\_ and \_\_\_\_\_, Co-Executors. And now the Court having re-opened this matter and \_\_\_\_\_, being appointed as Administratrix, D.B.N., and upon him qualifying as directed by Law;

It is, ORDERED that Letters of Administration, De Bonis Non are hereby issued to the above named Administrator, D.B.N., being now therefore empowered to enter into and take possession of all property rights and credits of this deceased person and to administer this Estate as required by Law.

IN WITNESS WHEREOF, I have issued these Letters of Administration, D.B.N., this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
CLERK & MASTER

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

SEE ATTACHED OATH

**CERTIFICATE**

I, Clerk and Master of this Court, certify that: (i) this is a Court of Record; (ii) the above is a true, full and correct copy of the Letters of Administration, d.b.n., issued by the Court in this Estate; (iii) these Letters are still in full force and effect as of this date; and (iv) these Letters appear of record in this Court's Probate Minute Book \_\_\_\_\_, Page \_\_\_\_\_

Witness my hand and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CLERK & MASTER

\_\_\_\_\_  
County Courthouse

CHANCERY COURT OF COUNTY, TENNESSEE

IN THE MATTER OF THE ESTATE OF \_\_\_\_\_, DECEASED

NO. P- \_\_\_\_\_ PROBATE

Resident of \_\_\_\_\_ County, Tennessee

\_\_\_\_\_ Tennessee \_\_\_\_\_

Date of Death: \_\_\_\_\_

Administratrix C.T.A.: \_\_\_\_\_

LETTERS OF ADMINISTRATION, C.T.A.

Whereas, it appearing to the Chancery Court that the above named deceased person left a written Will, which has been exhibited in this Court and duly proven in as the Law directs, and application being made to have Letters of Administration with Will Annexed granted on the said Estate, and the Court having appointed the above named Administratrix, C.T.A., and upon her qualifying as directed by Law;

It is, ORDERED that Letters of Administration with Will Annexed are hereby issued to the above named Administratrix, C.T.A., being now therefore empowered to enter into and take possession of all property rights and credits of this deceased person and to administer this Estate as required by Law.

IN WITNESS WHEREOF, I have issued these Letters of Administration with Will Annexed, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

MERRY B. SIGMON, CLERK & MASTER

STATE OF TENNESSEE  
COUNTY OF GILES

I do solemnly swear that I will honestly and faithfully discharge the duties of Administratrix, C.T.A., according to the terms of the Last Will and Testament and by law, to the best of my knowledge and ability. So help me God.

\_\_\_\_\_  
ADMINISTRATOR C.T.A.

Subscribed and sworn to before me, this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CLERK & MASTER

CERTIFICATE

I, Clerk and Master of this Court, certify that: (i) this is a Court of Record; (ii) the above is a true, full and correct copy of the Letters of Administration, C.T.A., issued by the Court in this Estate; (iii) these Letters are still in full force and effect as of this date; and (iv) these Letters appear of record in this Court's Probate Minute Book \_\_\_ Page \_\_\_\_\_.

Witness my hand and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CLERK & MASTER

\_\_\_\_\_  
County Courthouse  
(Address)

In the \_\_\_\_\_ Court of \_\_\_\_\_ County, Tennessee  
(Probate Division)

**SMALL ESTATE AFFIDAVIT**

DOCKET NUMBER \_\_\_\_\_

Estate of \_\_\_\_\_

Your Affiant, \_\_\_\_\_

would respectfully show unto the Court as follows:

That the deceased, age \_\_\_\_\_ died on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
in \_\_\_\_\_ County, State of Tennessee, and that his/her last residence was:

- The decedent left no Will.                       The decedent left a Will and the Will has been filed by  
the Clerk of this Court and a copy has been attached  
to this Affidavit as Exhibit "A".

The decedent left the following unpaid debts at the time of his/her death:

CREDITOR	ADDRESS	AMOUNT
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(IF OTHER DEBTS, ATTACH A SEPARATE SHEET)

The decedent died owning the following property (list all personal property which includes cash, bank accounts, notes receivable, automobiles, stocks and bonds and life insurance payable to the estate, mechanical equipment, household furnishings, etc.)

**Do Not List Jointly Owned Property**

ITEM	LOCATION & POSSESSION	VALUE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(IF OTHER PERSONAL PROPERTY, ATTACH SEPARATE SHEET)

TOTAL PERSONAL ESTATE \$ \_\_\_\_\_

The following are the names and addresses of all next of kin of the deceased:

<u>NAME</u>	<u>ADDRESS</u>	<u>RELATIONSHIP</u>	<u>AGE</u>
_____	_____		
_____	_____		
_____	_____		
_____	_____		
_____	_____		
_____	_____		
_____	_____		

Your Affiant is willing to collect and preserve all assets for the Estate, pay all creditors and distribute the remainder in accordance with the terms of the Will or according to the laws of descent and distribution of the State of Tennessee pursuant to T.C.A. 30-4-101.

I <input type="checkbox"/> do, <input type="checkbox"/> do not wish to publish for creditors. (PLEASE INDICATE BY CHECKING)
--

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Name of Affiant

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

**STATE OF TENNESSEE**  
**COUNTY OF \_\_\_\_\_**

Personally appeared before me, Notary Public / Deputy Clerk, the said \_\_\_\_\_,  
and after being sworn, deposes and says that the facts averred in the above Affidavit are true to the  
best of his/her knowledge, information, and belief.

\_\_\_\_\_  
Affiant

SWORN TO AND SUBSCRIBED BEFORE ME,  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public / Deputy Clerk

Commission expires: \_\_\_\_\_

Chancery Court for \_\_\_\_\_ County, Tennessee

IN THE MATTER OF THE ESTATE OF

No. \_\_\_\_\_

\_\_\_\_\_, DECEASED

Date of Death:

PROBATE DIVISION

Administrator *ad litem*:

*Letters of Limited Administration for Cause of Action Only*

Whereas, this Court has appointed the above named as administrator *ad litem* for a legal cause of action only as directed by law; it is therefore

Ordered that letters of limited administration for a legal cause of action only are hereby issued to the above named administrator *ad litem*, being now empowered to prosecute, defend, compromise, and settle a legal cause of action against \_\_\_\_\_.

In witness whereof, I have issued these letters on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CLERK & MASTER

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

By \_\_\_\_\_  
DEPUTY PROBATE CLERK

I solemnly swear I will honestly and faithfully discharge the duties imposed on me as required by law.

\_\_\_\_\_  
Administrator *ad litem*

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CLERK & MASTER

By \_\_\_\_\_  
DEPUTY PROBATE CLERK

➤➤➤➤➤ Certificate ◀◀◀◀◀

I, CLERK & MASTER of this court, certify: i) this is a Court of Record; ii) the above is a true, full, and correct copy of the Letters of Limited Administration for Cause of Action Only issued by this court in this estate; iii) these letters are still in full force and effect as of this date; and iv) these letters appear of record in this court's Administrators' Bonds and Letters Record Book NO. \_\_\_\_\_, page \_\_\_\_\_. Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CLERK & MASTER

By \_\_\_\_\_  
DEPUTY PROBATE CLERK



IN THE PROBATE COURT OF COUNTY,  
TENNESSEE

IN THE MATTER OF:

THE ESTATE OF

NO

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OATH OF PERSONAL REPRESENTATIVE

WITH THE UNITED STATES AIR FORCE  
AT RAFLAKENHEATH, SUFFOLK, ENGLAND

I, \_\_\_\_\_ to hereby solemnly swear or affirm that I will honestly and  
faithfully perform the duties of Personal Representative in the above referenced estate to the best  
of my ability and knowledge.

SO HELP ME GOD.

\_\_\_\_\_  
, ADMINISTRATOR  
PSC 37 BOX 1231  
APO AE 09459

Sworn to and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

\_\_\_\_\_

IN THE CHANCERY COURT FOR \_\_\_\_\_ COUNTY, TENNESSEE

IN RE: ESTATE OF \_\_\_\_\_

NO. \_\_\_\_\_

**ORDER REQUIRING STATUS REPORT**

The Clerk and Master's records indicate this decedent's estate has been open since \_\_\_\_\_.

It is therefore ORDERED that the Personal Representative(s) shall file a written report to inform the court of:

1. the status of the estate;
2. the reason(s) it is still open;
3. a detailed listing of all that remains to be done to complete the administration of the estate; and
4. the amount of time reasonably necessary to complete the administration of the estate.

The report shall be filed with the Clerk and Master of the Chancery Court within 60 days of this Order. A copy of the report shall be served upon all interested parties, with their names and addresses noted on the report to confirm such notification.

Failure to timely file the required report may result in the removal of the Personal Representative(s), appointment of a successor, and/or retirement of the file with the Personal Representative(s) being held personally liable for costs and liabilities for failure to properly administer the estate as a court-appointed fiduciary.

SO ORDERED, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CHANCELLOR

Certificate of Service

I hereby certify that a copy of the foregoing order has been sent by U.S. Mail to the Personal Representative(s) or the attorney of record for the Estate.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CLERK & MASTER

IN THE CHANCERY COURT FOR \_\_\_\_\_, TENNESSEE

ESTATE OF: \_\_\_\_\_ )  
  ) NO. \_\_\_\_\_

PETITION TO ADMIT HOLOGRAPHIC WILL TO PROBATE

Comes now Petitioner, \_\_\_\_\_, and files this petition in the matter of the last Will and Testament of \_\_\_\_\_ for probate of Will and Letters Testamentary. Petitioner respectfully shows:

1. \_\_\_\_\_ departed this life on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_, at the age of \_\_\_\_\_, whose residence at the time of death was \_\_\_\_\_.
  
2. The Petitioner has in his/her possession a document consisting of \_\_\_\_\_ handwritten page(s). The document is testamentary in nature. The document is entirely in the handwriting of the decedent. The decedent's signature appears on the document. The document is dated \_\_\_\_\_.  
  
The Petitioner offers proof of two disinterested witnesses, \_\_\_\_\_ and \_\_\_\_\_, that each one of them was familiar with the handwriting of the decedent, that the document is written entirely in the handwriting of the decedent, and that the signature is the signature of the decedent.
  
3. The said deceased left surviving as heirs at law, and devisees and legatees, the persons whose names and addresses appear hereafter:

NAME	AGE	RELATIONSHIP	ADDRESS
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. The estimated fair market value of this estate is \$\_\_\_\_\_.
5. The Last Will and Testament (waives) (does not waive) bond.
6. The Last Will and Testament (waives) (does not waive) filing of inventory and accounting.
7. The Petitioner is not aware of any instrument revoking the Last Will and Testament offered herein and Petitioner believes it to be the decedent's last will.
8. The decedent ( ) was ( ) was not enrolled in the TennCare program at the time of death.

Premises considered, your Petitioner prays:

1. That the Will be proved and established, proof of said Will be granted and the same ordered for record.
2. That the Clerk and Master be directed to administer the oath and otherwise qualify the Executor(rix) and issue Letters of Testamentary.
3. That Notice of Publication be given for creditors of said estate requiring them to file their claims within the time and in the manner required by T.C.A. § 30-2-306.
4. That the Petitioner be granted any other general or specific relief to which the estate may be entitled.

\_\_\_\_\_  
Signature/Petitioner

\_\_\_\_\_  
Address

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Personally appeared before me the said \_\_\_\_\_,  
and after being duly sworn deposes and says that the facts averred in the above  
affidavit are true to the best of his/her knowledge, information, and belief, this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC/CLERK & MASTER

(My Commission expires: \_\_\_\_\_)

IN THE CHANCERY COURT FOR \_\_\_\_\_ TENNESSEE

ESTATE OF: \_\_\_\_\_) NO. \_\_\_\_\_

AFFIDAVIT

1. My name is: \_\_\_\_\_;
2. My address is: \_\_\_\_\_;
3. I have examined the attached document and believe that the entire document is in the handwriting of: \_\_\_\_\_;
4. I have examined the attached document and believe that the document bears the signature of: \_\_\_\_\_;
5. My relationship to \_\_\_\_\_ was \_\_\_\_\_, and had many occasions to see specimens of his handwriting and signature.
6. At the time this document was written, I believe the testator was of sound mind and over the age of 18 years.

\_\_\_\_\_  
AFFIANT

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public/Clerk and Master

My Commission Expires: \_\_\_\_\_

IN THE CHANCERY COURT FOR \_\_\_\_\_ TENNESSEE

ESTATE OF: \_\_\_\_\_ ) NO. \_\_\_\_\_  
 )

AFFIDAVIT OF WITNESSES TO PROVE WILL

Personally appeared before me, the undersigned Notary Public, \_\_\_\_\_  
and \_\_\_\_\_, who, each being separately and duly  
sworn, each for himself on his oath or affirmation disposes and says:

1. That I am the witness whose name is signed to the Last Will and Testament of \_\_\_\_\_;
2. That \_\_\_\_\_, the testator, in my presence, signed the Will willingly after declaring it to be his Last Will;
3. That I, as witness, signed and witnessed the Will in the presence of the testator and in the presence of the other witness;
4. That it is my belief that the testator was of sound mind and memory and under no constraint or undue influence whatsoever when he signed his Will; and
5. That I, as witness, the other witness, and the testator are each at least eighteen (18) years of age.

\_\_\_\_\_  
Witness

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

Subscribed and sworn to before me, this the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public/Clerk & Master

My Commission Expires: \_\_\_\_\_

In the Court of County, Tennessee  
(Probate Division)

IN THE ESTATE OF:

Docket No. \_\_\_\_\_

**AFFIDAVIT OF PERSONAL REPRESENTATIVE**

STATE OF TENNESSEE )  
COUNTY OF \_\_\_\_\_ )

Pursuant to Tennessee Code Annotated §30-2-301(b)(1), as Personal Representative of this estate, I certify that the following people have been notified that they are beneficiaries of this estate by:

- sending them a copy of the decedent's Will.
- sending them a copy of the Letters of Administration, because no Will exists.

The following people have been notified (use back, if necessary):

	<u>NAME</u>	<u>ADDRESS</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____

I was unable to locate the following people because:

	<u>NAME</u>	<u>EXPLANATION</u>
1.	_____	_____
2.	_____	_____

I am not required to notify the beneficiaries because:

- I am the sole heir of the estate.
- the Will was probated in solemn form.

I, \_\_\_\_\_ the Personal Representative, submit this Affidavit under Oath and state the foregoing information is true.

\_\_\_\_\_  
Personal Representative

Sworn to and subscribed before me,  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public / Deputy Clerk  
My Commission Expires: \_\_\_\_\_





IN THE CHANCERY COURT FOR \_\_\_\_\_ TENNESSEE

ESTATE OF: \_\_\_\_\_ ) NO. \_\_\_\_\_

WAIVER

I, the undersigned, decline to serve as Executor of the Estate of \_\_\_\_\_  
\_\_\_\_\_, and hereby request the Court to approve \_\_\_\_\_  
\_\_\_\_\_ to serve as Executor.

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
ADDRESS

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public/Clerk and Master

IN THE CHANCERY COURT FOR \_\_\_\_\_, TENNESSEE

ESTATE OF: \_\_\_\_\_ ) NO. \_\_\_\_\_

WAIVER

I, the undersigned, decline to serve as Administrator of the Estate of \_\_\_\_\_  
\_\_\_\_\_, and hereby request the Court to approve \_\_\_\_\_  
\_\_\_\_\_ to serve as Administrator.

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
ADDRESS

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public/Clerk and Master









