

## **INFORMATION FOR THE PERSONAL REPRESENTATIVE**

Please review this summary of certain aspects of estate administration. We hope that this information will help to explain some of the requirements, value, and steps in administering the estate and that it will answer some of your questions about your duties as personal representative. Of course, no outline can answer all questions, and answering those questions is part of our job as attorneys for the personal representative (P.R.); for that reason, please feel free to call us.

### **I. IS PROBATE NECESSARY?**

Probate is not always required. For instance, if all property was held by a husband and wife as tenants by the entirety (a type of joint ownership with rights of survivorship), probate may not be necessary. This is a legal question, which can only be answered when the assets of the estate are fully identified. Another alternative to probate appears to qualify, you will be given, or may have received another informational memorandum dealing with the Small Estate Act.

### **II. WHAT IS THE PURPOSE OF PROBATE?**

Probate of the estate may be necessary in order to:

1. Identify and collect the assets;
2. Insure payment of taxes;
3. Provide a system for determining and paying creditor's claims;
4. Authenticate the Will;
5. Identify and provide for orderly distribution to beneficiaries';
6. Transfer title to property to the beneficiaries; and
7. Foreclose creditors of decedent from making claims against decedent's property after the close of probate proceedings.

In short, probate helps to protect the decedent's creditors, debtors, relatives, and beneficiaries, and to insure that the decedent's Will is valid and that its provisions are carried out.

### **III. WHAT ARE THE STEPS INVOLVED IN PROBATE?**

#### **A. THE PETITION.**

The proceedings are commenced by filing a petition in the Probate Court, asking for the appointment of a P.R. and, if there is a Will, for the admission of the Will to probate. The original of the Will is submitted with the petition.

1. The Court will:
  - a. Appoint the P.R. and issue "Letters Testamentary" or "Letters of Administration" to the P.R.
  - b. Admit the estate to probate;
  - c. Admit the Will to probate; and
  - d. Set the bond for the P.R. unless otherwise provided in the Will.
2. Before submission of the petition to the court, you will have met with us, collected the information needed for the petition, and signed the completed petition.

#### **B. NOTIFICATION.**

1. Upon appointment, you must deliver or mail to devisees and heirs a notice of the probate proceeding. Within 30 days after appointment, the P.R. must file an affidavit showing delivery or mailing of the notice to the heirs and devisees. We will prepare the notice and affidavit.
2. Also upon appointment, you must publish a notice to interested persons for three consecutive weeks in a newspaper published in the county in which the estate is being probated. Again, there is a requirement that the P.R. file affidavit of publication of the notice. We will prepare the notice and the affidavit. The responsibility for paying for the publication is the P.R.'s, although this expense is reimbursed as an allowable expense for administering the estate.

#### **C. INVENTORY.**

Within 60 days after appointment, you must file with the court an inventory of estate property coming within your control as P.R. The court may extend the filing period upon application for such and extension.

Note: Since the inventory must include the true cash value of the property, it may be necessary to engage the services of an appraiser. The appraisal fee is to be paid from estate funds as an expense of administration.

#### **D. CARE OF SURVIVING SPOUSE AND CHILDREN**

If needed, there are special provisions for supporting the surviving spouse and children out of the estate. This issue will not be discussed in this memorandum, but is mentioned to make you aware of the availability of such provisions.

#### **E. CLAIMS AGAINST THE ESTATE.**

1. Creditors are given a period of 4 months after the date of first publication of notice to interested persons to make claims.
2. The claims must be formally presented, and you should not pay any claim prior to consulting with us.
3. Certain claims have priority over others and may not need to be presented (e.g., secured creditors' claims to property securing the debt). The warning given in paragraph E.2 still applies: consult with us before paying or allowing any claim.
4. Expense of administration are not claims against the estate, but are personal obligations of the P.R. However, if properly incurred for the benefit of the estate, they may be reimbursed to the P.R. out of the estate assets without formal presentment. This reimbursement is allowed even if it results in the estate having insufficient assets to pay general claims, and it is second in preference among expenses only to support of spouse and children. "Expenses" include the P.R. fee and the fees of your attorney.
5. Creditors that are known to have claims against the estate must be notified by the P.R. Please see enclosed P.R.'s Creditor Search Checklist, which will assist you in identifying creditors. Once you have identified the creditors, we will assist you in preparing the notice to creditors.

#### **F. ACCOUNTING.**

The P.R. must account for all estate assets that come into the P.R.'s possession. An accounting must be filed annually, when the estate is ready for distribution and closing, and at such other times as the court may direct.

### **G. TAXES.**

1. The P.R. is responsible for filing the decedent's final federal and state income tax returns at their normal due date (usually April 15 following the year of death). If there is a surviving spouse, a joint return will probably be used and filed on the filing date for the surviving spouse.
2. If the estate assets are generating income, the P.R. may have to file a fiduciary income tax return.
3. There may be a need to file federal gift and estate tax returns. An Oregon gift tax return may also be necessary. Filing these returns does not mean any tax is owed.
4. Some of the tax returns may be prepared by us, such as the estate and inheritance tax returns. Other tax returns may be prepared by an accountant.

### **H. PARTIAL DISTRIBUTION.**

If sufficient assets remain to pay support of spouse and children, expenses of administration, unpaid claims and debts, and there will be no loss to creditors, the estate, or interested parties, then a petition may be filed requesting a partial distribution. Whether to allow the partial distribution is a determination to be made by the court.

### **I. FINAL DISTRIBUTION AND ACCOUNTING TO CLOSE ESTATE.**

When it appears that all necessary actions have been taken with respect to the estate assets, claims, taxes and administration expenses, we work with you to prepare and file a final accounting with the court.

1. The accounting covers all property received by the estate and all disbursements made in administering the estate.
2. The accounting requests approval of attorney fees and reimbursements to you.

3. The accounting requests approval of P.R.'s fees or indicated a waiver of the P.R.'s fees.
4. If the court approves the accounting, it issues an order directing the final distribution of the assets.
5. Receipts are received and filed for assets distributed, after which the P.R. is discharged and the estate closed.

#### **IV. WHAT ARE THE P.R.'S POWERS AND DUTIES?**

A. The P.R. is a fiduciary, similar to a Trustee, whose duties and powers commence upon issuance of the Letters Testamentary or Letters of Administration.

B. The general duties of the P.R. consist of collecting the income from property of the estate in the P.R.'s possession and preserving, settling, and distributing the estate in accordance with the Will and the Oregon Probate Code. Included in these general duties are such actions as insuring estate assets and, if necessary, instituting civil actions to regain estate assets which have been misappropriated. Oregon Revised Statutes contain a detailed list of your powers which are designed to permit you to carry out your duties.

V. Finally, you will work closely with us. As your attorney, we will answer questions, which you encounter in the course of administering the estate. Certain questions not involving legal analysis (i.e., "procedural" questions) may be answered by one of our assistants. We look forward to working with you in order to have an efficient, economical estate administration.