

Personal Representative Training Manual

After viewing the contents of this manual you will be able to:

- Summarize the role of the Personal Representative
- Compare and contrast supervised vs. unsupervised probate administration
- Explain how handling an intestate differs from an estate with a Last Will and Testament
- Discuss the process for closing the estate

Supervised Administration v. Non-Supervised Administration

The intent of the probate court is to stay out of the affairs of a decedent (the deceased individual) estate as much as possible. The probate courts in Arizona take the position that the heirs, beneficiaries or devisees of an estate likely have the ability to protect their own interest in the estate and therefore, do not need the court monitoring the activities of a personal representative as they would for a guardianship or conservatorship.

➤ Unsupervised Personal Representative

Most probate administrations are not supervised by the court. This means the personal representative has the ability to liquidate property or make distributions without first seeking approval of the court. Any interested party may request the court “supervise” the activities of the personal representative. This can happen for a number of reasons. The interested party may be concerned that the personal representative is not acting for the benefit of the estate or the heirs, or one of the heirs or beneficiaries may be a minor or incapacitated, so the interested party believes additional court oversight is necessary.

➤ Supervised Personal Representative

When the court orders that a personal representative’s appointment is supervised this means the personal representative must petition the court for approval to take most actions. For example, the personal representative would need to seek the court’s approval before liquidating property, distributing property/cash, or closing the estate.

Intestate and Heirs

➤ If the estate is intestate, how do you determine heirs?

Arizona Revised Statutes §14-2103 outlines who should inherit the estate of the decedent if the person dies without leaving a will. According to this statute there is a prescribed order in which an estate passes on to the heirs. The order of inheritance is shown below:

Surviving spouse

If no surviving spouse:

The decedent’s children or their children,

If no children:
The decedent's surviving parent(s),

If no parents:
The decedent's sibling(s) or their children

If no sibling(s) or nieces/nephews:
The decedent's grandparents – one-half to the maternal side and one-half to the paternal side

If there are no relatives:
The State of Arizona

➤ **Determining Heirs**

Determining who may be the heirs and in what percentage can be complicated. You should seek the advice of legal counsel to ensure that you have identified all potential heirs. It is best to seek a professional who will conduct an heir search and provide you with a report as to who may be entitled to inherit from the estate. Once you have determined who you believe to be the heirs of the intestate estate, you will want to file a petition for determination of heirs with the court so that the court may confirm the heirs of the estate.

Providing Notice to Interested Parties

Interested parties are individuals or companies who may have a financial interest in the estate such as an heir, beneficiary or devisee. An interested party may also be an individual who has filed a demand for notice, such as a creditor. If you are dealing with an intestate estate, you will need to provide notice to the Arizona Attorney General as they may receive the estate proceeds if no relatives can be located.

Filing Informal Probate

If you are filing an informal probate you shall give notice to interested parties, of the fact that you were appointed as the personal representative, within thirty days from the date of appointment. You shall notify the parties of the court where the Will was filed or where the petition for appointment was filed. You shall also provide them with a copy of the Order of Personal Representative which outlines your duties and responsibilities as the personal representative.

Filing Formal Probate

If you are filing a formal probate proceeding, you shall give notice of the date and time of the hearing to all interested parties at least 14 days prior to the hearing.

Providing Notice to Creditors

Once you are appointed as the personal representative, you must give notice to all known and unknown creditors. A creditor is any individual or entity which may have been owed money by the decedent before their death or as a result of their death. Examples include mortgage companies, physicians, credit card companies, and tax authorities, among others.

➤ **Unknown Creditors**

In order to ensure you have notified all unknown creditors, you shall publish notice in a newspaper of general circulation in the county where you were appointed. The notification shall state that you were appointed as the personal representative and provide the address where creditor's claims may be sent. You shall publish this one time per week for three successive weeks.

➤ **Known Creditors**

A known creditor is some person or company you know the decedent owed money to before death, such as a personal physician or credit card company. You shall provide actual notice to all known creditors by providing them with a copy of the Notice to Creditors that you file with the court.

➤ **Creditor's Claim**

Once a potential creditor has been notified of the death, the creditor has 120 days to present a bill to the estate for payment. Some creditors will file a creditor's claim directly with the court; others will simply send you the bill. Both methods are acceptable for presenting the claim to the estate.

➤ **Time Frame for Claim**

The time frame for presentation of the creditor's claim is calculated in one of two ways:

For unknown creditors the 120 day countdown begins on the date of first publication. As an example, if the first date that the creditor's notice is published in the newspaper is February 1, the creditor has until May 31 to present their claim.

For known creditors who receive actual notice, the 120 day countdown begins on the day you sent out the notification.

➤ **When Creditor's Period Expires**

If you receive a creditor's claim after the creditor's period has expired you have an obligation to deny the claim. The notice to creditors notifies the creditor that if they do not present their claim within 120 days, their claim is barred. A creditor may petition the court to argue against the fact that you denied the claim. The court will then determine whether the creditor should be paid or if the claim should be denied.

Order of Payment

➤ **Who gets paid in what order?**

The state statutes outline how creditor's claims are to be paid in the order as follows.

Costs and expenses of administration. This means your fees and expenses as the personal representative and those of your attorney; Funeral expenses; Debts and taxes under federal law (Internal Revenue Service); Medical and hospital expenses related to the last illness of the decedent, including compensation to individuals providing care; Debts and taxes with preference under state law (Arizona Department of Revenue); all other claims. This means that all other debts of the decedent fall into the same category. If there is more than one creditor in a particular category, they are all treated equally and no one has priority over the other for payment.

Pro Rata Share

➤ What if the estate is not large enough to cover all debts?

If the estate is not large enough to cover all of the debts, the debts are paid in the order outlined in the state statute. If all creditors with the exception of creditors in the final category have been paid, the remaining creditors get a pro rata share of the remaining cash. A pro rata share is the percentage of debt the creditor represents in comparison to the entire value of the debt owed.

➤ Debt Example

As an example, there are 10 creditors with a total debt owing of \$100,000. Creditor 1 submitted a claim worth \$50,000. This means that Creditor 1 represents 50% of the total debt owed by the decedent. If there is only \$25,000 available to pay the remaining creditors, Creditor 1 would receive \$12,500 toward their bill as they represent 50% of the claims.

Marshal and Secure All Assets

As a personal representative, your first priority is to marshal and protect the assets of the decedent's estate. When the court tells you to marshal an asset, do you know what they mean? The court wants you to take control of the assets, on behalf and for the benefit of, the estate. There are a number of different ways that you can do this.

➤ "Certified" Letter

One of the first things you need to do is obtain a current "certified" copy of your letter of appointment. A certified copy is a copy issued by the Clerk of the Court in the county where your letter was issued. The certified copy states that it is a true and complete copy of the original letter on file with the issuing court, and that the letters of personal representative are currently in effect.

➤ Record Your Letter

Once you have obtained the certified copy of your letters of appointment (or letters of personal representative) you will need to record these with the county recorder in every county where the decedent owned property. By recording your letters of appointment you are putting the public on notice of your appointment. You are also creating a record should someone attempt to sell real property belonging to the estate that you are the only person entitled to transfer property on behalf of the estate.

➤ **Notice of Filing**

Once you have received the recorded copy of your letters of appointment back from the recorder's office (there will be a marking on the document that reflects it has been recorded and where that record can be found for future reference), you will need to file a Notice of Filing with the court to show that you have recorded the letters of appointment.

➤ **Marshal an Account**

In order to marshal a bank or brokerage account, you will need to notify the financial institution of your appointment. When you first meet with the financial institution be sure to bring the original, stamped letter or the certified copy of your letter of appointment with you. Most banks' legal department will want to see a certified copy of your letter of appointment in order to allow you access to the account. You should also have a copy of the decedent's death certificate and a copy of the letter from the Internal Revenue Service assigning the employer identification number of the estate.

How Should Assets Be Titled?

Once you have presented your letter of appointment, the account(s) will be re-titled to the name of the estate. The way the account is titled depends on the organization you are working with. Some will title it as "Estate of Jane Doe, by John Doe, Personal Representative"; others will title it as "John Doe, Personal Representative for the Estate of Jane Doe." The purpose of this is to notify the organization (bank, brokerage firm, Department of Motor Vehicles) that you are the only person who should be dictating how the asset is held, spent, or managed.

Recording Transactions

You should be very careful not to let any other individual have access to any bank accounts you manage. While there is no law that prohibits you from using a debit card or cash to transact business on behalf of the estate, it is best to avoid using a debit card or cash whenever possible. Debit cards can be easily accessed by another individual and it is difficult to prove that a cash transaction was used for the benefit of the estate. If it is necessary to use cash for a purchase be sure to keep all receipts to prove the purchase was for the benefit of the estate.

Re-Title Vehicles

You may also re-title vehicles in the name of the estate. In order to transfer the title of vehicles into the estate you will need to bring your letters of appointment with you. The Motor Vehicle Division typically requires a certified copy dated within 60 days from the date of the re-title request. Vehicles may be cars, motorcycles, boats, recreational vehicles or motor homes.

Obtain an EIN

An EIN is an employer identification number. This is similar to a Social Security Number and is the number that is used to report the estate income to the Internal Revenue Service. You may obtain an EIN online from the Internal Revenue Service's website at www.irs.gov

Inventory and Appraisement

Unlike a conservatorship that requires you file the Inventory and Appraisement with the court AND provide a copy to interested parties, in a probate proceeding you can choose. You may file

the inventory and appraisal with the court and notify the interested parties that you filed it and they may request a copy from the court. Alternatively, you are not required to file it with the court (unless the court has ordered you to do so) and you can mail a copy of the inventory and appraisal directly to the interested parties. You must do one or the other within 90 days from the date of your appointment.

Assets of the Estate

All assets of the probate estate should be listed on the inventory and appraisal. Assets to be included, but not limited to, are shown below:

- Bank accounts
- Brokerage accounts
- Annuities
- Life insurance policies (the cash surrender value)
- Real property (homes, vacant land, and burial plots)
- Automobiles
- Jewelry/Artwork/Antiques
- Household items
- Cash/Coins

How Much Detail

➤ How much detail should you include?

You should include as much detail as is necessary to reasonably identify the asset. For example, if the protected person has a checking account at Bank of America, you would document it as “Bank of America Checking” and provide the Account number.

➤ Documenting Assets

When documenting an automobile, you should include the make, model, year and vehicle identification number (VIN). You should include the address and parcel number for real estate.

Documenting household items on an inventory is a little more difficult. Some will include a lump sum value of miscellaneous household property and others will include details such as one sofa, one end table and one coffee table. No matter the amount of detail you choose to include for household items, you should always photograph or video tape the personal property.

➤ Date and Valuation of Assets

When dealing with a probate estate, the value of an asset on the inventory and appraisal is determined by its value on the date of death of the decedent. When listing a bank account, brokerage account or annuity, you will want to list the value as of the date of death. A reliable way to determine the value of an automobile would be to use the Kelley Blue Book valuation.

➤ Provide a Reasonable Estimate

Determining the value of other assets may be a little more difficult. Appraisals may be obtained for homes, jewelry, artwork or antiques. Appraisals can be very costly so if it is not your intent to

liquidate the asset in the very near future, it may be best to provide a reasonable estimate of the asset's value as the value can change significantly in a very short period of time, such as with real estate. If you provide an estimate for the value be sure to make note of this on the inventory.

➤ **In-Kind Distribution**

Additionally, some assets may be distributed to a beneficiary as an "in-kind" distribution. An in-kind distribution is when you give the individual the property just as it is, such as a ring. Instead of selling the ring and giving the individual the cash, you are giving them the actual asset. The statute requires that the personal representative obtain an appraisal of any property given "in-kind" within 30 days of distributing the property. This is another reason it may be best to wait on an appraisal as you do not want to waste estate assets getting multiple appraisals for the same piece of property.

Payable/Transfer on Death

➤ **What if you discover assets are "payable on death" or "transfer on death"?**

If you discover that an asset is "payable on death" or "transfer on death" you should notify the individual(s) named as the beneficiary and provide them with the information necessary for them to take possession of the asset. As the personal representative you do not have the authority to marshal a payable on death asset because it no longer belongs to the decedent or his estate after his death; the interest in the asset now belongs directly to the beneficiary.

Record Keeping

➤ **What types of records should you keep?**

You are required to keep records of all income and expenses you manage as the personal representative of the estate. You will need to keep copies of all bank statements, brokerage statements, invoices, receipts, and any other record you need to support your efforts as personal representative.

Invoices

One good practice is to attach a copy of a check used to pay an invoice to the copy of that invoice. This ensures all parties that the expenses you are making are for the benefit of the protected person.

Original Papers

You should maintain the original papers for all important documents, such as deeds, titles, birth certificates, death certificates.

Maintaining Records

The amount of time you maintain records can depend on a number of factors. It is recommended that you keep all records regarding your activities as personal representative for, at a minimum, as long as you are acting as personal representative. Keep in mind, other laws may recommend you keep records for longer periods of time.

The typical recommendation is to follow the record retention requirements outlined by the Internal Revenue Service. The most recent information from the IRS indicates you should keep records according to the following conditions shown on this page.

1. If you owe additional tax and situations (2), (3), and (4), below, do not apply to you; keep records for 3 years.
2. If you do not report income that you should report, and it is more than 25% of the gross income shown on your return; keep records for 6 years.
3. If you file a fraudulent return; keep records indefinitely.
4. If you do not file a return; keep records indefinitely.
5. If you file a claim for credit or refund* after you file your return; keep records for 3 years from the date you filed your original return or 2 years from the date you paid the tax, whichever is later.
6. If you file a claim for a loss from worthless securities or bad debt deduction; keep records for 7 years.
7. Keep all employment tax records for at least 4 years after the date that the tax becomes due or is paid, whichever is later.

Payment for Personal Representative

You are entitled to payment for your time as the personal representative. The court may review your fees at the time you close the estate. You are also entitled to reimbursement from the estate for any money you pay out of pocket for the estate's benefit. For example, if you pay for a filing fee with the court, you would be entitled to be reimbursed for that expense.

Attorney's Fees

➤ Can You Hire An Attorney?

You may hire an attorney and are entitled to have the fees for that attorney paid for by the estate as long as the court determines that the fees are reasonable and necessary.

Closing the Estate

Upon expiration of the creditor's claims period, you should be able to close the estate. If the assets of the estate are sufficient to pay all claims, then all claims should be paid. If you have reason to believe a claim on the estate is not valid you may deny that claim. However, if you do so, you will need to allow time for the creditor to challenge the denial.

➤ Final Tax Return

You may want to meet with a CPA to discuss the timing and process for filing the final estate tax return. To file the final return you will need to obtain an Internal Revenue Service Form W-9 from each heir, beneficiary or devisee. At the time of filing the final tax return, the CPA will prepare a document called a Form K-1 which will be provided to each beneficiary, heir or devisee.

➤ Supervised Personal Representative

You may close the estate in one of two ways depending on your appointment type. If you are operating under a supervised administration, you will be required to file a formal account with the court which outlines the starting value of assets (the inventory value), the income and expenses, the ending value of the estate and a proposal as to how you plan to distribute those funds to the individuals /entities who are to receive them.

➤ **Non-Supervised Personal Representative**

If you are not operating under a supervised administration, you may still choose to file a formal account with the court but you are not required to do so. Instead, you may provide the interested parties with a copy of your accounting and obtain a waiver and release from them. The waiver and release will typically indicate that they acknowledge receipt of the account, they have no issues with its contents, they agree to the distribution plan and waive you filing the account with the court.

Distributions to Heirs

Upon approval of the distribution plan by the court or receipt of all waivers and receipts from the heirs, beneficiaries or devisees, you may distribute the assets of the estate according to law, the terms of the Last Will and Testament and/or the distribution plan.

Distribution Receipts

It is good practice to send a receipt to the individual/entity receiving the distribution as you will want to supply a copy of the signed receipt to the court to prove that you have distributed the assets of the estate. It can be difficult sometimes to get beneficiaries, heirs or devisees to return the receipt. It is suggested to send the distribution via certified mail/return receipt requested. If you are unable to obtain the receipt back, you will at least have the certified mail receipt to show the court that you delivered the distribution.

Closing the Estate

Upon filing of the final tax return, providing an account to all interested parties, and receiving proof of distribution, you may close the estate.

➤ **Formal Closing of the Estate**

As with the account, you can do this in one of two ways. If you are operating under a supervised administration, you will be required to petition the court for permission to close the probate estate. If you are not operating under a supervised administration, you may still choose to file a formal petition for discharge with the court. The benefit to filing the formal petition is that, if you have a bond, you are able to obtain exoneration of the bond immediately.

➤ **Informal Closing of the Estate**

Keep in mind, any time a formal closing procedure is used, the costs to the estate are typically higher. This is why the court recommends an “informal” closing. With an informal closing you will file a closing statement with the registrar (Clerk of the Court) which will include the waivers and receipts you obtained from the heirs, beneficiaries or devisees. The registrar will then sign the closing statement which indicates that if no objections are filed within one year, the estate is closed and the bond may be exonerated.

Thank you for viewing this training manual. The welfare of the ward and/or protected person is of utmost importance to the court. For more information about Probate please visit the Judicial Branch website devoted to Probate at www.azcourts.gov/probate.