

Overview Of Probating an Estate

1. OPENING THE ESTATE

a) **Worksheet/Application/Petition**

To begin informal administration of an estate, complete the Estate Worksheet (**not required for Attorneys**), Application/Petition **filed by Attorneys only**(Form 300ES/blue). Once you have a file number you will be assigned a clerk. No hearing is required for informal probate and/or informal appointment. For formal probate or appointment, the services of an attorney are recommended. This requires the filing of a Summons/Petition/filing fee(\$150.00) and then service on the interested parties. A hearing will then be set for presentation of testimony. If a request for informal probate or appointment cannot be granted (because of certain legal requirements), we will so inform you. You may then proceed formally.

b) **Proof Of Death**

You need to furnish the Court with an original death certificate.

c) **Last Will And Testament**

You must provide the Court with the original Last Will and Testament of the decedent.

d) **Fees**

Fees are required to open an estate.

Filing Fees	
Initial filing fee to open estate Payable to Probate Court	\$25.00
Info to Heirs-1st heir included	\$0.50 for each additional heir
Notice to Creditors payable to The Lancaster News	\$50.00

e) These fees are due at the time the Informal Petition (Form 300ES/blue) is submitted. The Creditor's fee is for the creditor's advertisement, which appears in the newspaper once a week for three weeks. The Probate Court will handle the placement of this ad.

f) **Bond**

Bond is required for an appointment of a Personal Representative of an intestate

estate when a named Personal Representative is expressly required by the Will to post a bond, and when bond is demanded by an interested party. Bond may be waived: (1) if the Personal Representative certified by affidavit (ask for form) that the gross estate value will be less than \$20,000, assets are sufficient to pay all claims, and that the Personal Representative agrees to be personally liable to any interested party for any negligence or misconduct in the performance of his duties; AND (2) if all known beneficiaries execute a written statement (ask for form) that they agree to the bond being waived.

g) QUALIFICATION

Once all initial requirements are completed and filed (valid Will, certified death certificate, completed Form 300ES, advertisement fee, bond (if applicable), renunciations (if applicable), etc.), Proper Order(s), Fiduciary Letters, and Certificates of Appointment will be issued by the Probate Court. This indicates that the necessary steps have been taken to begin the administration of this estate.

2. NOTICE TO CREDITORS - Due Date - Court to handle

The Personal Representative is required to publish the Notice to Creditors if passed less than one year ago. Publication is to be once a week for three weeks. In Charleston County, the Probate Court now handles this for you. Creditors, by law, have eight months from the date of first publication of this notice to file claims. The newspaper will send to the Court an Affidavit of Publication indicating on which dates the ad was published.

**3. INFORMATION TO HEIRS AND DEVISEES - Due Date - 30 days after appointment
PROOF OF DELIVERY - Due Date - 30 days after appointment**

Within 30 days after your appointment you must give information of your appointment and the probate of the Will, if applicable, to all devisees and heirs (Form 305ES). The devisees are the persons named to inherit in the Will, and the heirs are those who would inherit had there been no Will. You must return the Proof of Delivery (Form 120PC) to the Probate Court along with a copy of the "Information to Heirs and Devisees". If you use a different manner of giving notice for different persons, please indicate such on the "Proof of Delivery".

4. **INVENTORY AND APPRAISEMENT - Due Date - 90 days after appointment**

Within 90 days after your appointment, you must file an Inventory and Appraisement (Form 350ES) with the Probate Court. You are to list and value all property owned by the decedent at death including property owned with another person. Take care to discover, list, and value all property to avoid delays in closing this estate later. In the event an extension is needed, please submit Petition for Extension (Form 352ES) prior to the Inventory due date.

Upon receipt of the Inventory, a Court cost will be assessed and billed. See Probate Court fee table below.

Inventory Fees	deduct initial \$25.00 filing fee
Property valuation less than \$5,000.00	\$25.00
\$5,000.00 but less than \$20,000.00	\$45.00
\$20,000.00 but less than \$60,000.00	\$67.50
\$60,000.00 but less than \$ 100,000.00	\$95.00
\$100,000.00 but less than \$600,000.00	\$95.00 plus .0015 in excess of \$100,000.00
\$600,000.00 and above	\$845.00 on the 1st \$600,000.00 plus .0025 in excess of \$600,000.00

5. **CLAIMS**

Eight months after the first publication of the Notice to Creditors, the period for filing creditor's claims expires. If you have not already done so, proceed to pay claims. If the assets of the estate are insufficient to pay all claims in full, payment is to be made in the following order:

- a) Costs and expenses of administration, including attorney's fees, and reasonable funeral expenses;
- b) Debts and taxes with preference under federal law;
- c) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him/her and medical assistance paid by Medicaid;

- d) Debts and taxes with preference under other laws of this state, in order of their priority;
- e) All other claims.
- f) Also, while debts or claims may be paid at any time by a Personal Representative, you may incur personal liability if any preferred creditor is damaged or injured by such payment. Claims which are not valid claims may be disallowed through proper procedures.

6. DEED OF DISTRIBUTION

If there is real estate (land, house, etc.) in the estate, a Deed of Distribution ([Form 400ES](#)) must be completed. It is recommended that your attorney assist you with this duty. The Deed of Distribution transfers the real property from the decedent's name to those who inherit it. It is suggested that this not be done until all the claims are received and it is determined that the real estate does not need to be sold to pay the debts.

7. CLOSING DOCUMENTS - Due Date - 8 to 12 months after date of publication.

These documents will be provided to you by the Court if the estate does not have an attorney of record.

a) Accounting & Proposal For Distribution

Between eight months and twelve months after the first publication of the Notice to Creditors (or, if this is a taxable estate, 90 days after receipt of South Carolina Tax Commission estate tax closing letter), you must file with the Court a complete accounting ([Form 361ES](#)) of the entire probate administration (assets received during the course of administration, disbursements/bills paid out, and balance to be distributed to the beneficiaries). You must also file your Proposal for Distribution ([Form 410ES](#)).

b) Application For Settlement

Complete and file your Application for Settlement ([Form 412ES](#)) with the Probate Court.

c) Notice Of Right To Demand Hearing

Notice of Right to Demand Hearing ([Form 416ES](#)) is to be sent to all interested parties, including unpaid creditors, along with a copy of the Accounting, Proposal for Distribution, and Petition for Settlement. If no written request for a hearing is received by the Probate Court within 30 days, you may proceed to complete the final

requirements as outlined by the Probate Court. This will include beneficiary receipts from the distributees ([Form 403ES](#)), release of claims. You will need to check with your assigned Estate Clerk to determine all final requirements. Upon receipt of all final documents, the Court will close the file and terminate your appointment as Personal Representative ([Form 413ES](#)). The 30-day period can be waived if a Waiver ([Form 111ES](#)) is signed by all interested parties.

d) **Proof Of Delivery**

Proof of Delivery ([Form 120PC](#)) that you have sent these documents (Accounting, Proposal for Distribution Petition for Settlement, and Notice of Right to Demand Hearing) must be filed with the Probate Court.

8. GENERAL CONSIDERATIONS

a) **Books And Records**

In order to keep proper books for the estate, it is suggested that you establish an estate account in which you will deposit every item of money belonging to the decedent which comes into your hands and pay all claims by check. By doing this, you will have no trouble in keeping the account in exact balance and preparing your final accounting.

b) **Federal Identification Number**

If a Federal Identification Number is required, obtain it through the Internal Revenue Service (Form SS-4). The IRS phone number is 1-800-829-1040.

c) **Demand For Notice**

If, at any time during the administration of the estate, you receive a Demand for Notice you must comply with the demand and send a copy of whatever is demanded to the person indicated on the form. Any time you file documents with the Court, if a copy of the document has previously been demanded, you will be required to provide the Court with a Proof of Delivery ([Form 120PC](#)) indicating what you served on whom.

d) **Formal Petition**

If a Formal Petition requiring a hearing is filed by you or anyone else during the course of administration, it is highly recommended that an attorney be employed. The Court cannot advise on matters which it must decide.

e) **Estate Tax Matters**

South Carolina Tax Waivers are obtained through the South Carolina Tax Commission. For estate tax purposes, an estate is considered taxable if the gross value is over \$1,500,000 and there were no lifetime taxable transfers. For more information please visit the South Carolina Bar - Taxes at Death website.

f) **Probate Code**

See Title 62 Article 3 of the South Carolina Code for matters not included in these instructions. Copy of this law is available for viewing at the Probate Court or at the public library.

g) **Rule To Show Cause**

If you do not complete the assigned tasks within the prescribed time periods, the law requires the Court to issue a Rule to Show Cause as to why the estate is not being probated in a timely manner. If a hearing is held you may be required to pay the court costs.