



STATE OF MARYLAND
REGISTER OF WILLS FOR MONTGOMERY COUNTY, MARYLAND

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September 9, 2011

This book is not a do-it-yourself manual. It is a compilation of the various policies and procedures that are in effect for probate proceedings in Montgomery County. These policies and procedures are based on Maryland Statute, Opinions of the Attorney General, letters of advice of the Attorney General and case law. This is intended primarily as a reference for the estate proceeding requirements. It is also intended to clarify what are considered allowable disbursements from estate assets and what the filing requirements are to make such disbursements. This book identifies the information, which the Court generally requests be submitted with a filing, before the Court will issue a ruling on the matter.

One of these books will be given to every member of the Register of Wills team, every Judge in Montgomery County who presides over the Orphans' Court and is available to all persons practicing probate law. The information contained herein will be used by every member of my staff as a reference for the policies and procedures, which they must adhere to in performing their duties. It is my sincere hope that this book will be utilized by our Judges and members of the Bar Association not as instructions on how to perform their duties but rather as a tool.

A member of the public who must go through the probate process is, in a sense, a client to us all. I believe we will each serve our client better if everyone involved is working from the same book.

These policies and procedures are subject to change and may not be applicable to every situation. In an attempt to keep this resource as current and useful as possible it will be updated annually.

My deepest appreciation and gratitude to Judge Patrick Woodward, Dena C. Feeney, Esq., Marcia Fidis, Esq., Richard Lyon, Esq., and the members of my staff including, Margie Beatty and Matthew Tevelow, for their many hours of dedication in putting this book together.

With hope that this book will prove to be a useful tool to all who use it, I remain

Committed to quality service,

A handwritten signature in cursive script that reads "Joseph M. Griffin".

Joseph M. Griffin

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* Use Control + F to find a keyword or use the advance search option under the edit menu to find a your keyword throughout the entire document

General Information

Register of Wills Office
50 Maryland Avenue Room 322
Rockville, Maryland 20850

Hours.....8:30 a.m. – 4:30 p.m. Monday through Friday
Main phone number.....240-777-9600
Toll free within Maryland.....1-888-892-2180
Fax number.....240-777-9602
Web site.....<http://registers.maryland.gov>

Appointments are recommended to open estates in order to promote faster service

Register of Wills
Joseph M. Griffin

Chief Deputies
Margie Beatty
Lynda Hawkins

Financial Analysis Department.....240-777-9640

Assistant Chief Deputy
D’Mitra Lofton

Auditors

Jane Gardner
John Clifford
Stacy Glover
Amera Jones
Joann Lee
Morgan Brooks
Jonathon Phelps
Cheri Tolson-Clipper

Questions regarding the following should be directed to this department:

Accounts, Petition for Fees/ Commissions, Petition for Funeral Expenses, Inheritance Tax on Probate Assets, Distribution, Final Reports, Audit Request Information Report, Inheritance Tax on Non-Probate, Trust, Joint Accounts, Payable on Death Accounts, IRAs, any interest less than absolute, Inventories, Appraisals

Computer Systems Division.....240-777-9600

Systems Administrator Manager
Charlie Keyser
Systems Administrator
Robert Sullivan

Court Division.....240-777-9690

Courtroom Clerk
Maureen Burch
Mandy Campbell
Paul Dollahite

Questions regarding the following should be directed to this department:

Hearings, Caveats, Miscellaneous Petitions, Show Cause Orders, Subpoenas

Data Processing Division.....240-777-9670

Assistant Chief Deputy
Ann Rodgers

Data Entry Clerks
Jenifer King
Karen Moulton
Michael Para
T.J. Rodgers
Linda Santucci

Questions regarding the following should be directed to this department and appropriate personnel:

Whether an Estate has Been Opened, Whether a Document has Been Filed and/or Docketed

T.J. Rodgers - Delinquent Filings, Extensions of Time, Mandatory Filing Deadlines, Claims

Finance Division.....240-777-9600

Iwona Piotrowska

New Proceedings Division.....240-777-9620

Assistant Chief Deputy
Marion Jackson

Deputies
Cleto Barreto
Joe Kelley
Kim Johnson
Alan Kuzminsky
Amparo Mantilla
Kenneth Payso
Andreas Mantzouris
Tewanna Vasquez

Questions regarding the following should be directed to this department and or appropriate personnel:

Wills, Administrative Probate, Judicial Probate, Bonds, Jurisdiction, Letters of Administration, Updated/ Additional Letters for a Small Estate

Alan Kuzminsky - Change of Address and Amended List of Interested Persons

Records Division.....240-777-9680

Assistant Chief Deputy
Cynthia Schommer

Questions regarding the following should be directed to this department:

Copy Request, Updated/ Additional Letters of Administration in Regular Estates, Exemplified Copies, Certified Copies, General Information from Estate Files

Deputy/ Clerks
Dylan Rawls
Marcos Flores

Office Administration.....240-777-9624

Matthew Tevelow

Questions regarding the following should be directed to this person:

Problems with website, incorrect/outdated forms, speaking engagements/information sessions, community outreach, office publications

The policies and procedures listed in this book should not be construed as local rules.

It is the policy of this office that guardianships of minor persons be filed in the Circuit Court. (77 Opinions of the Attorney General No. 92-009 March 20, 1992)

***All forms can be downloaded from the Register’s web page.**

Programs, Processes and References:

Alternative Dispute Resolution (ADR) - see page 4 for additional information
Pro Bono Service – see page 4 for additional information

MICPEL

- *Fiduciaries Duties and Liabilities (1996)*
- *Gibber on Estate Administration (2008)*
- *Pre and post Mortem Planning for Non-Probate Assets (2000)*
- *Trusts and Estate Practice (1998)*
- *Will Contests and Related Litigation (1997)*

Programs, Processes and References:

As of April 1, 2000, two legal assistance programs became available to individuals participating in the probate process. These two programs, an **Alternative Dispute Resolution (ADR)** and a **Pro Bono service**, both for Orphans' Court proceedings were developed by, and implemented in, Montgomery County.

The ADR program, commonly referred to as mediation, allows interested persons in an estate to resolve disputes through a mediator, as opposed to resorting to litigation, with its inherent delay and additional expense. This program will benefit more than just the parties who opt for mediation. Use of ADR will free up the hearing docket, resulting in fewer delays for litigants who plan to go to trial. Attorneys interested in being appointed as mediators should submit an application and resume to the Register of Wills. Applicants must be members of the Maryland Bar in good standing and possess at least 10 years experience practicing probate.

Both parties involved in the dispute will have to consent to the mediation. Please call Susan Kalil with Differentiated Case Management (DCM at 240-777-9108 with questions about forms or the mediation process.

The *Pro Bono* service is a tool to assist the court without creating any additional cost to the estate. This service is available for situations when the court feels it does not possess sufficient, or proper, information to make a fair and appropriate ruling. In these instances, the Register has a list of attorneys willing to serve as court-appointed investigators on a *pro bono* basis to investigate and report back to the court their findings on the information in question. Once the court has ordered an investigator to research a particular issue and report back by a certain date, the Register of Wills will then issue subpoenas to allow the investigator access to all applicable information and records.

Anyone interested in having their name placed on a list of possible Special Investigators should contact Joseph Griffin, Register of Wills or the current Chair of the Estates and Trusts Section of the Montgomery County Bar.

MICPEL

- *Fiduciaries Duties and Liabilities (1996)*
- *Gibber on Estate Administration (2008)*
- *Pre and post Mortem Planning for Non-Probate Assets (2000)*
- *Trusts and Estate Practice (1998)*
- *Will Contests and Related Litigation (1997)*

Definitions

- Administrative Probate* – a proceeding instituted by the filing of a petition for probate by an interested person **before the register** for the probate of a will or a determination of the intestacy of the decedent, and for the appointment of a personal representative. [Estates and Trusts §5-301]
- Certified Mail* - mail deposited with the United States Postal Service as postage prepaid, return receipt requested, addressed to the addressee at the address last known to the sender. [Maryland Rule 6-105(a)]
- Child* - includes a legitimate child, an adopted child, and an illegitimate child (under certain circumstances see Estates and Trusts §1-208)) [Estates and Trusts §1-205 through 208]
- Code* - the Annotated Code of Public General Laws of Maryland, Estates and Trusts Article as from time to time amended. [Maryland Rule 6-105(c)]
- Court* - the Orphans’ Court of a county [Estates and Trusts §2-101]
- Estate* - property that is subject to administration under the Estates and Trusts Article as the estate of the decedent [Tax General §7-201(b)]
- Heir* - a person entitled to property of an intestate decedent [Estates and Trusts §1-101(h)]
- Interested Person* -
- (1) a person named as personal representative in a will;
 - (2) a person serving as personal representative after judicial or administrative probate;
 - (3) a legatee in being, not fully paid, whether his interest is vested or contingent;
 - (4) an heir even if the decedent dies testate, except that an heir of a testate decedent ceases to be an “interested person” when the register has given notice
 - (5) interested persons include a person as above defined who is (a) minor or other person under a disability, or (b) the judicially appointed guardian, committee, conservator or trustee for such person, if any, and if none, then the parent or other person having assumed responsibility for such person.

(6) an heir or legatee whose interest is contingent solely on whether some other heir or legatee survives the decedent by a stated period is an interested person but only after the other heir or legatee has died within that period. [Estates and Trusts §1-101(i)]

- Issue - every living lineal descendant except a lineal descendant of a living lineal descendant [Estates and Trusts §1-209]*
- Judicial Probate - a proceeding instituted by the filing of a petition for probate by an interested person, or creditor **with the court** for the probate of a will or a determination of the intestacy of the decedent, and for the appointment of a personal representative. [Estates and Trusts §5-401]*
- Legacy - any property disposed of by will, including property disposed of in a residuary clause and assets passing by the exercise by the decedent of a testamentary power of appointment. [Estates and Trusts §1-101(l)]*
- Legatee - a person who under the terms of a will would receive a legacy. It includes a trustee but not a beneficiary of an interest under the trust. [Estates and Trusts §1-101(m)]*
- Less than absolute interest - an interest less than an absolute interest in property, in trust or otherwise including a life estate; an interest for a term of years; a contingent or vested remainder, or executory or reversionary interest that a person other than the decedent creates. [Tax General §7-201(c)]*
- Letters - letters of administration. [Estates and Trusts §1-101(n)]*
- Letters of Administration - formal document issued by the register of wills appointing one a personal representative of an estate. [Black's Law Dictionary]*
- Maryland Rules - the rules promulgated by the Court of Appeals of Maryland under the authority of the Constitution and laws of Maryland. [Estates and Trusts §1-101(o)]*
- Minor - a person who has not reached the age of 18 [Estates and Trusts §13-101(m)]*

- Person - includes any individual, partnership, joint stock company, unincorporated association or society, municipal or other corporation, the State, its agencies or political subdivision, any court, or any other governmental entity. [Maryland Rule 6-105(d)]*
- Property subject to - administration includes both real and personal property, and any right or interest therein. Property refers to (1) all real and personal property of a decedent and (2) any right or interest therein which does not pass, at the time of the decedent's death, to another person by the terms of the instrument under which it is held, or by operation of law. [Estates and Trusts §1-101(r)]*
- Property that passes from a decedent - includes property that passes, by will or under the intestate laws of the State, at or after the death of a decedent, in trust or otherwise, to or for the use of another person; property in which, at death, a decedent had an interest as a joint tenant; or except for a bona fide sale for an adequate and full consideration in money or money's worth, property that passes by an inter vivos transfer by a decedent, in trust or otherwise, if: (1) the transfer is made in contemplation of death; (2) the transfer of a material part of the property of the decedent in the nature of a final disposition or distribution is made by the decedent within 2 years before death unless it can be shown not to have been in contemplation of death; (3) the transfer is intended to take effect in possession or enjoyment at or after the death of the decedent; or (4) under the transfer, the decedent retained any dominion over the transferred property during the life of the decedent, including the retention of: (a) a beneficial interest; (b) a power of revocation, absolute or conditional; or (c) a power of appointment by will or otherwise. Notwithstanding any parol agreement, the written form of the title is controlling for intangible personal property held in joint tenancy. [Tax General §7-201(d)]*
- Register / Registrar - an officer who has the custody and charge of keeping records; the register of wills of a county. [Black's Law Dictionary and Estates and Trusts §1-101(s)]*

Subsequent interest -

a vested or contingent remainder, executory or reversionary interest, or other future interest that is created by a decedent and will or may vest in possession after the death of the decedent includes a sole or concurrent subsequent interest. [Tax General §7-201(e)]

Will -

(1) a written instrument, which is executed and has not been revoked. (2) "Will" includes a codicil. [Estates and Trusts §1-101(w)]

Chapter One

Reference	Description
ET §4-101	Who may make a will
ET §4-102	Writing; signature; attestation
ET §4-103	Holographic will
ET §4-104	Will made outside Maryland
ET §4-105	Revocation of will
ET §4-106	Revival of will
ET §4-107	Incorporation by reference
ET §4-201	Deposit of will in lifetime of testator
ET §4-202	Duty of custodian of will upon death of testator
ET §4-203	Robbery or larceny of will
ET §4-301	Who may be a legatee
Rule 6-151	Filing a will
Rule 6-152	Proof of execution of will

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule - Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

Any person may make a will if they are 18 years of age or older, and legally competent to make a will.

Except for a holographic will or a will made outside Maryland, every will shall be:

- in writing
- signed by the testator/ testatrix, or by some other person for them, in their presence and by their express direction
- attested and signed by two or more credible witnesses in the presence of the testator/ testatrix

Holographic Will:

A will entirely in the handwriting of a testator/testatrix who is serving in the armed services of the United States is a valid holographic will if signed by the testator/ testatrix outside of a state of the United States, the District of Columbia, or a territory of the United States even if there are no attesting witnesses. A holographic will is void one year after the discharge of the testator/ testatrix from the armed services.

Will made outside Maryland:

A will executed outside this state is properly executed if it is:

- in writing
- signed by the testator/testatrix; and
- executed in conformity with Maryland law, or the law of the domicile of the testator/testatrix, or the place where the will is executed

Revocation of a will:

A will or any part of it may be revoked, as provided below:

- subsequent will
- destruction
- subsequent marriage with issue
- divorce or annulment - specifically related to the interest of the former spouse

Deposit of will in lifetime of testator/ testatrix:

A will may be deposited by the testator/ testatrix, or their agent, for safekeeping with the register of the county where the testator/testatrix resides. The register shall give a receipt for the will upon the payment of the **filing fee of \$5.00**. During the lifetime of the testator/ testatrix a deposited will may be delivered only to the testator/testatrix, or to a person authorized by them in writing to receive the will. A person wishing to take the will of another must have specific written authorization by the testator/ testatrix, unless a power of attorney so delineates, the person with such power does not have the authority, under the statute, merely by being the agent under power of attorney to take the will from the registers office.¹

Promptly after learning of the decedent's death, the custodian of a document appearing to be the last will of the decedent shall file it with the register even if it is not to be offered for probate. A will to be offered for probate, unless previously filed, shall be filed in conjunction with the filing of a petition for administrative or judicial probate or administration of a small estate.

If a will does not contain a recital by attesting witnesses of facts constituting due execution, then upon the filing of a verified statement of a person with personal knowledge of the circumstances of execution of the will the register shall assume due execution.

Proof of Execution of Will

[\(Form 1102\)](#)

¹ Attorney General letter of advice dated July 9, 1986

All forms referenced are located in the appendix

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Two Section I

Reference	Description
ET §5-301	<i>Administrative Probate</i> - Nature of proceeding
ET §5-302	Action on petition for probate
ET §5-303	Proof of execution of will
ET §5-304	Finality of action in administrative probate
Rule 6-301	Petition for probate
Rule 6-311	Notice of appointment
Rule 6-312	Bonds
Rule 6-313	Consent to appointment
Rule 6-314	Renunciation
Rule 6-315	Appointment of resident agent
Rule 6-316	List of interested persons
Rule 6-317	Notice to interested persons
Rule 6-321	Appointment of personal representative
Rule 6-322	Letters of administration
Rule 6-331	Publication
Rule 6-342	Personal representative acceptance and consent
Rule 6-351	Conversion to small estate proceeding

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule - Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

If the property of the decedent subject to administration in Maryland is established to have a value in excess of \$30,000.00 (in excess of \$50,000.00 if spouse is the sole legatee or heir) the estate shall be administered as a regular estate. In establishing the value of an estate only the assets held in the name of a decedent alone and/or an interest held as tenants in common are considered. The value is determined by the fair market value of property less debts of record secured by the property, as of the date of death, to the extent that insurance benefits are not payable to the lien holder or secured party for the secured debt.

In order to open a regular estate the following is required:

Original of the Last Will and Testament and Codicil(s) if any	(Form 1112)
Regular Estate Petition for Probate	(Form 1136)
Schedule A	(Form 1104)
List of Interested Persons	(Form 1104)
<i>Must be filed within 20 days after appointment</i>	
Nominal Bond of Personal Representative	(Form 1116)
<i>May be utilized if bond is expressly excused by the will or by written waiver of all interested persons or</i>	
Bond of Personal Representative	(Form 1115)
<i>Utilized if bond is <u>not</u> expressly excused by the will or by written waiver of all interested persons</i>	
Notice of Appointment Notice to Creditors Notice to Unknown Heirs	(Form 1114)

Additional requirements if applicable:

Appointment of Resident Agent	(Form 1106)
<i>Required if petitioner is a non-resident of Maryland</i>	
Consent to Appointment of Personal Representative	(Form 1118)
<i>If proper person is not petitioning consent is required by all interested persons who have greater priority</i>	
Waiver of Bond	(Form 1117)
<i>must be filed by all interested persons if the will does not excuse bond requirements and the estate wishes to file a nominal bond</i>	
Waiver of Notice	(Form 1101)
<i>May be filed by any interested person in order to avoid notice requirements to that interested person</i>	

A bond is not required if a national banking association or a trust company, as defined in the Financial Institutions Article, is serving as personal representative.

All forms referenced are located in the appendix

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Two Section II

Reference	Description
ET §5-702	Election for modified administration
ET §5-703	Extension of time periods
ET §5-704	Proceedings after filing election
ET §5-705	Form of election
ET §5-706	Notice of consent
ET §5-707	Final report
ET §5-708	Revocation of modified administration
ET §5-709	Closing Estate
ET §5-710	Applicability of other provisions of article
Rule 6-455	Modified Administration
Rule 6-456	Modified Administration – Extension of Time to file final report

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

An election for modified administration and consent to election for modified administration may be filed by a personal representative of an estate and interested persons within 3 months from the date of appointment. In a modified administration a formal inventory and accounting are not required. In lieu of an account a less formal verified final report is required. An information report is still required within 3 months from date of appointment.

Qualifications for Modified Administration:

1. All residuary legatees of a testate decedent and the heirs at law of an intestate decedent are limited to the:

decedent's personal representative(s) and individuals or entities exempt from inheritance tax in the decedent's estate under 7-203 (b), (e), and (f) of the Tax General-Article

2. All trustees of each trust that is a residuary legatee are limited to the decedent's:

***personal representative
surviving spouse; and
children***

3. The estate is solvent and sufficient assets exist to satisfy all testamentary gifts

4. A verified final report under modified administration is filed within 10 months from the date of appointment

5. Final distribution of the estate can occur within 12 months from the date of appointment

6. All residuary legatees of a testate decedent and the heirs at law of an intestate decedent consent to a modified administration as required.

Forms required to be filed:

**Election of personal representative for modified administration
Consent to election for modified administration**

**[\(Form 1141\)](#)
[\(Form 1142\)](#)**

Filed by all residuary legatees of a testate decedent and the heirs at law of an intestate decedent including the personal representative(s) if also a residuary legatee or heir at law

The initial time periods for filing a final report and for making distribution to each legatee and heir are extended by 90 days on a consent for extension of the time periods signed by the personal representative and each interested person and filed within 10 months from the date of appointment. (Effective for decedents dying on or after October 1, 2003)

Revocation of Modified Administration

A modified administration shall be revoked by the :

- 1. Filing of a timely request for judicial probate;**
- 2. Filing of a written objection by an interested person;**
- 3. Filing of a withdrawal of the election for modified administration by a personal representative**
- 4. Orphan's Court , on its own initiative, or for good cause shown by an interested person or by the register of wills;**
- 5. Failure by the personal representative to timely file the final report under modified administration and make *timely* distribution**
- 6. Failure by the personal representative to comply with any provisions of Estates and Trusts Article Title 5 subtitle 7.**

The register of wills shall mail notice of any revocation by first class mail, postage prepaid, to each interested person.

Procedure after revocation:

If modified administration is revoked the personal representative shall:

- 1. Proceed under administrative probate; and**
- 2. (a) File a formal inventory and account with the register of wills within the time periods provided in Estates and Trusts Article Title 7; or
(b) If the deadline has passed for filing either an inventory or an accounting file the late document within 30 days from the register's notice of revocation.**

Reminders

Upon written request to the personal representative by any legatee not paid in full or any heir-at-law of a decedent who died without a will, a formal inventory and account shall be provided by the personal representative to the legatees or heirs of the estate.

At any time during administration of the estate modified administration may be revoked by filing a written objection with the register of wills office by an interested person.

All claimants are interested persons until fully satisfied.

A register of wills or a court may not extend the time periods established for the filing deadlines of the election of personal representative and consent to election for modified administration.

A disclaimer filed in a modified administration estate may qualify or disqualify the modified administration status depending on the final takers.

All forms referenced are located in the appendix

Please note policies established are subject to change and may not be applicable in every situation

Chapter Two Section III

Reference	Description
ET §5-601	<i>Small Estates</i> – Administration in accordance with subtitle
ET §5-602	Petition for Administration
ET §5-603	Proceedings after petition
ET §5-604	Bond, Compensation, duties and liability of PR
ET §5-605	After discovered property
ET §5-607	Applicability of other provisions of this article
ET §6-122	Petitions
Rule 6-201	Petition for Administration of small estate
Rule 6-202	List of interested persons
Rule 6-203	Consent to appointment
Rule 6-204	Renunciation of letters
Rule 6-205	Appointment of resident agent
Rule 6-206	Proceedings after petition
Rule 6-207	Letters of administration
Rule 6-208	Form of Register’s order
Rule 6-209	Notice of appointment
Rule 6-210	Notice of interested persons
Rule 6-211	Proceedings after publication
Rule 6-212	After-discovered property
Rule 6-222	Personal Representatives Bond
Rule 6-351	Conversion to small estate proceeding

Small Estates Valuation ET §5-601

Prior to 1970	\$ 1,000.00
1/1/70 – 6/30/74	\$ 2,000.00
7/1/74 – 6/30/78	\$ 5,000.00
7/1/78 – 6/30/82	\$ 7,500.00
7/1/82 – 6/30/88	\$ 10,000.00
7/1/88 – 6/30/00	\$ 20,000.00
7/1/00 – Current	\$ 30,000.00 (\$50,000.00 for spouse only)

Effective for decedents who die on or after 1/1/98 the dollar threshold is determined by fair market value of property less the debts of record secured by the property as of date of death, to the extent that insurance benefits are not payable to the lien holder or secured party.

References: **ET – Annotated Code of Maryland
Estates and Trusts Article**
 **Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Family Allowance ET §3-201

Prior to 1970	\$ 500.00 to spouse, \$1,000.00 to spouse with minors
1/1/70 – 6/30/81	\$1,000.00 to spouse, \$ 500.00 to each minor
7/1/81 – 6/30/91	\$2,000.00 to spouse, \$1,000.00 to each minor
7/1/91 – current	\$5,000.00 to spouse, \$2,500.00 to each minor

Funeral Allowance ET §8-106

Prior to 7/1/71	\$ 500.00
7/1/71 - 6/30/83	\$1,200.00
7/1/83 – 6/30/88	\$1,800.00
7/1/88 – 6/30/91	\$2,500.00
7/1/91 – 12/31/97	\$3,500.00
1/1/98 – Current	\$5,000.00

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

If the property of the decedent subject to administration in Maryland is established to have a value of \$30,000.00 or less (\$50,000.00 or less if spouse is the sole legatee or heir) the estate may be administered as a small estate. In establishing the value of an estate only the assets held in the name of a decedent alone and/or an interest held as tenants in common is considered. The value is determined by the fair market value of property less debts of record secured by the property, as of the date of death, to the extent that insurance benefits are not payable to the lien holder or secured party for the secured debt.

In order to open a small estate the following is required:

Original of the Last Will and Testament and Codicil(s) if any	(Form 1103)
Small Estate Petition for Administration	(Form 1137)
Schedule B	(Form 1104)
List of Interested Persons	(Form 1104)
Copy of death certificate or proof of death (funeral bill)	
Filing Fee (if publication is required an additional certified mail fee is required)	

Additional requirements if applicable:

Information Report	(Form 1124)
Proof of debts of record in conjunction with assets reported	
Appointment of Resident Agent	(Form 1106)
<i>Required if petitioner is a non-resident of Maryland</i>	
Consent to Appointment of Personal Representative of Small Estate	(Form 1105)
<i>If proper person is not petitioning consent is required by all interested persons who have greater priority</i>	
Small Estate Notice to Creditors	(Form 1109)
<i>Required if there is property remaining after the payments of expenses and allowances</i>	
Bond of Personal Representative	(Form 1115)
<i>Unless bond is expressly excused by the will or by written waiver of all interested persons a bond is required if the estate has a gross value of \$10,000 or more after the payment of expenses and allowances</i>	
Waiver of Bond	(Form 1117)
<i>If a bond is required may be filed by all interested persons in order to excuse bond</i>	

The will is not an enforceable document unless it is admitted to probate and cannot be admitted to probate unless notice is published.

When a small estate is converted to a regular estate due to increased value of the decedent's estate, the probate of the estate begins anew.¹

Conversion to a small estate from a regular estate requires the filing of a Petition for Administration of a Small Estate prior to the filing of an initial account in the regular estate.

¹ Letter of advice of the Attorney General dated October 28, 1980

All forms referenced are located in the appendix. Please note policies established are subject to change and may not be applicable in every situation.

Chapter Two Section IV

Reference	Description
ET §5-401	<i>Judicial Probate</i> - Nature of Proceeding
ET §5-402	When mandatory
ET §5-403	Notice of request
ET §5-404	Hearing
ET §5-406	Finality of action in judicial probate
ET §5-407	Subsequent proceeding
ET §6-307	Request for Judicial Probate
Rule 6-221	Proceedings under judicial probate small estate
Rule 6-302	Proceedings under judicial probate regular estate

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

Judicial Probate is a proceeding instituted by the filing of a petition for probate by an interested person, or creditor, with the court for the probate of a will or determination of the intestacy of the decedent, and for the appointment of a personal representative. The same forms are required for judicial appointments as administrative appointments refer to Chapter 1 – Opening Estates, Section I – Regular Estates & Section III – Small Estates of this booklet.

The following will result in referral to the Orphans' Court by the Register:

- 1. Petitioner not having priority status**
- 2. The request of an interested person**
- 3. Petitioner is a creditor**
- 4. Petition for administrative probate is materially incomplete or incorrect in any respect**
- 5. The will has been torn, mutilated, burned in part, or marked in a way as to make a significant change in the meaning of the will**
- 6. It is alleged that an original will is lost or destroyed**
- 7. At the discretion of the Register**

Filing Fee - Certified mail and newspaper publication cost

Notice of Judicial Probate

form prepared by the register of wills office

[\(Form 1113\)](#)

All forms referenced are located in the appendix

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Two Section V

Reference	Description
ET §5-501	<i>Foreign Personal Representative</i> – Letters in Maryland not required
ET §5-502	Powers of FPR
ET §5-503	Claims
ET §5-504	Procedures to fix inheritance tax
ET §5-505	Lien for payment of taxes
ET §5-506	Order directing transfer of title
Rule 6-501	Application by FPR to set tax

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

A foreign personal representative administering an estate which has property located in Maryland subject to Maryland inheritance taxes shall file with the register of the county in which the foreign personal representative believes the largest part (in value) of the Maryland property is located even if the property is exempt from inheritance tax.

Filing requirements of a Foreign Personal Representative:

Copy of appointment and will, if any, authenticated under Title 28, U.S.C.A. 1738

This is referred to as an exemplified copy or triple seal copy

Application by Foreign Personal Representative to Set Inheritance Tax ([Form 1133](#))

Appointment of Resident Agent ([Form 1106](#))

Only required if foreign personal representative is not a Maryland resident

List of recipients of Maryland property ([Form 1104](#))

Notice to Creditors of Appointment of Foreign Personal Representative ([Form 1134](#))

Appraisal or other basis for valuation of real or leasehold property, or of tangible personal property that is taxable in Maryland

Authority to Tax - TG §7-202

“ . . . a tax is imposed on the privilege or receiving property that passes from a decedent and has a taxable situs in the State.” Property having a taxable situs for purposes of TG §7-202 includes real property and tangible personal property located in the State of Maryland.

Appraisals, Appraisers and Qualifications of Appraiser –refer to Chapter 6 – Inventories - of this booklet for requirements.

Letters of Administration are not issued to a foreign personal representative. The form is to be signed by the foreign personal representative as “applicant” only. The application is merely a request that the Register set inheritance tax.

Court Costs: In addition to any inheritance tax assessed, court costs pursuant to ET §2-206(p) will also be payable.

“(p) Proceedings *involving foreign personal representatives*. – For all proceedings involving a foreign personal representative, a single fee of 1% of the gross value of the estate, not to exceed \$100.”

Inheritance tax for a foreign estate is based on the clear value, i.e.: distributive value less mortgage.¹

¹ Letter of advice of the Attorney General dated March 2,1971

All forms referenced are located in the appendix

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Three Section I

Reference	Description
ET § 5-104	Order of right to letters
ET § 5-105	Restriction of right to letters
ET § 5-106	Appointment
ET § 7-101	Duties of personal representative generally
ET § 7-102	Possession and control of estate
ET § 7-401	General Powers
ET § 6-204	Powers of surviving co-personal representative

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

A Personal Representative is appointed to marshal the assets and to act as a fiduciary of the estate.

Required qualifications to be appointed as Personal Representative:

1. **18 years of age**
2. **A citizen of the United States, or a permanent resident of the United States and a spouse, descendent, an ancestor, or a sibling of the decedent (effective for decedents who died on or after 10-10-04)**
3. **Mentally competent**
4. **Resident of Maryland unless a resident agent form is on file with the Register's office**

Right to Letters of Administration

1. **Personal Representative named in the will or codicil admitted to probate;**
2. **The personal representatives nominated in accordance with a power conferred *in a will* admitted to probate;**
3. **The surviving spouse and children of an intestate decedent, or the surviving spouse of a testate decedent;**
4. **The residuary legatees;**
5. **The children of a testate decedent who are entitled to share in the estate;**
6. **The grandchildren of the decedent who are entitled to share in the estate;**
7. **Subject to §3-111 and 3-112 of this article, the parents of the decedent who are entitled to share;**
8. **The brothers and sisters of the decedent who are entitled to share in the estate;**
9. **The largest creditor of the decedent who applies for administration;**
10. **Any other person having a pecuniary interest in the proper administration of the estate of the decedent who applies for administration; or**
11. **Any other person.**

(Effective October 1, 2005)

Duties of Personal Representative

A personal representative is a fiduciary. The personal representative is under a general duty to settle and distribute the estate of the decedent in accordance with the terms of the will and the Estates and Trusts Article as expeditiously and with as little sacrifice of value as is reasonable under the circumstances. The personal representative shall use the authority conferred by the Estates and Trusts Article, by the terms of the will, by orders in proceeding to which the personal representative is a party, and by the equitable principles generally applicable to fiduciary, fairly considering the interests of all interested persons and creditors. ET §7-101

Responsibility and General Powers of Personal Representative

In the performance of the personal representative duties pursuant to § 7-101, a personal representative may exercise all of the power or authority conferred by statute or in the will, without application to, the approval of, or ratification by the court.

A personal representative may exercise many powers in addition to the powers and authorities granted in the will, and other statutory guidelines, subject to any limitations by will or order of court. Some of those powers may include the following (however see also ET §7-401):

- 1. Hold assets**
- 2. Hold securities in the name of a nominee- in this case the personal representative is responsible for any wrongful act of the nominee in connection to this asset**
- 3. Receive assets and deposit funds**
- 4. Deposit assets in restricted accounts, so that assets can not be withdrawn or transferred without the following:**
 - The written consent of the surety on the bond; or**
 - An order of court**
- 5. Satisfy charitable pledges**
- 6. Pay or compromise claims, pay funeral expenses, pay taxes**
- 7. Insure property**
- 8. Vote stocks, sell or exercise stock rights, exercise options in life insurance policies held by the estate**
- 9. Sell, purchase or otherwise deal with property, pay encumbrances**
- 10. Employ specialists**
- 11. Continue business, perform contracts**
- 12. Make distribution**

When a person within a class of persons eligible to be personal representative is petitioning to be appointed, the Register may require consents from other persons in the class. This will only occur if the Register has reason to believe the appointment will generate controversy and there is a need for court intervention.¹

The guardian of the decedent's minor child, who was not married to the decedent on the date of death, or not otherwise related to the decedent does not qualify to be appointed PR by virtue of guardianship without filing for Judicial Probate.²

¹ Letter of advice Attorney General dated July 22, 1993

² Courtney v. Lawson, 97 Md. App. 471,631 A.2d 102 (1993)

Persons in categories ET §5-104 (10) and (11) who petition for appointment are referred to the Orphans' Court for advice on whether these appointments must be made through Judicial Probate.³

The right to administer the estate of a deceased relative is a valuable right granted by legislature and cannot be delegated.⁴

³ Letter of advice Attorney General dated December 6, 1971

⁴ Langfelder v. Langfelder, 189 Md.88, 54 A.2d 312 (1947)

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Three Section II

Reference	Description
ET § 6-202	Powers and duties of successor personal representative
ET § 7-205	Inventory of successor personal representative
Rule 6-451 (b)	Resignation of personal representative (successor)
Rule 6-451 (d)	Resignation of personal representative (inventory of successor pr)

References: **ET – Annotated Code of Maryland
 Estates and Trusts Article**
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1

Register's Policies and Procedures

An appointment of a Successor Personal Representative is required when the personal representative is deceased, or the personal representative wishes to resign.

A successor personal representative has the same powers and duties to complete the administration of the estate as the original personal representative, including the powers granted in the will, but excluding any power expressly made personal to the personal representative named in the will.

If no one applies for appointment as successor personal representative or special administrator before the filing of the statement of resignation and an appointment is not made within the 20-day period, the resigning personal representative may petition the court for the appointment of a successor personal representative.

The successor personal representative shall file within 3 months of appointment either a new inventory or a written consent to the original filing to replace the one filed by the preceding personal representative. The successor personal representative's Inventory must be comparable to the prior personal representative's inventory or assets retained in the last account.

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Three Section III

Reference	Description
ET § 6-401	Special Administrator appointment; qualifications
ET § 6-402	Special Administrator bond
ET § 6-403	Special Administrator powers and duties
ET § 6-404	Special Administrator termination of appointment
Rule 6-454	Special Administration

References: **ET – Annotated Code of Maryland
Estates and Trusts Article**
**Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

A Special Administrator is appointed:

1. When it is necessary to protect the estate property prior to the appointment and qualification of a personal representative.
2. Prior to the appointment of a successor personal representative following a vacancy in the position of the personal representative.

The appointment of a special administrator may be initiated by the court, the register or upon the filing of a petition of an interested person, creditor, the personal representative of a deceased personal representative, or the person appointed to protect the estate of a personal representative under a legal disability.

A "suitable" person may be appointed as a special administrator at the court's discretion. However special consideration shall be given to persons who will or may ultimately be entitled to appointment as personal representative and are immediately available for appointment. Notice of the appointment of a special administrator is not required unless directed by the court.

The bond requirements for a special administrator and any other provisions regarding a personal representative's bond shall apply equally to a special administrator.

The special administrator shall assume any unperformed duties required of a personal representative concerning the preparation and filing of inventories, accounts and notices of filing accounts, and proposed payments of fees and commissions. The special administrator has more limited powers than a personal representative. The special administrator shall "collect, manage, and preserve property of the estate" and shall account to the personal representative subsequently appointed. The special administrator shall have such further duties and powers as ordered by the court.

The appointment of a special administrator terminates upon the appointment of a personal representative. The powers of a special administrator may be suspended or terminated in the same manner as those of a personal representative.

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Three Section IV

Reference	Description
ET § 6-305	Resignation
Rule 6-451	Resignation of personal representative

References: **ET – Annotated Code of Maryland
Estates and Trusts Article**
**Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

A personal representative or co-personal representative who wishes to resign before the filing and approval of the final account shall file with the register a statement of resignation and a certificate of notice of intention. The certificate must indicate that the notice of intention to resign was served on all interested persons at least 20 days prior to the filing of the statement.

The resignation of a personal representative is effective upon the appointment of a successor personal representative and the resigning personal representative shall immediately account for and deliver estate property (within 30 days) to the successor personal representative or special administrator.

The resignation of a co-personal representative is effective upon the giving of notice and the filing of the statement with the register as provided for in ET §6-305.

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Three Section V

Reference	Description
ET §6-306	Removal
ET §6-301	Suspension
ET §6-302	Termination
ET §6-303	Effect of termination
Rule 6-452	Removal of a personal representative
Rule 6-453	Suspension of powers and duties of a personal representative

References: **ET – Annotated Code of Maryland
Estates and Trusts Article**
**Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

The removal of a personal representative may be initiated by the court or the register, or on petition of an interested person. The court shall issue a show cause order and conduct a hearing for the purpose of determining whether the personal representative should be removed. Upon appointment of a successor personal representative or special administrator the court shall order the personal representative who is being removed to (1) file an account with the court and deliver the property of the estate to the successor personal representative or special administrator or (2) file an affidavit in lieu of account if the estate has had no assets during the accounting period.

A personal representative shall be removed from office by the court for the following:

- 1. Misrepresentation of material facts in the proceedings leading to the appointment**
- 2. Willfully disregarding an order of the court**
- 3. Inability, with or without fault, to discharge the duties and powers effectively**
- 4. Mismanagement of property**
- 5. Failure to maintain on file with the register a currently effective designation of an appropriate local agent for service of process**
- 6. Failure, without reasonable excuse, to perform a material duty pertaining to the office**

Upon service of the show cause order, the personal representative may only exercise the powers of a special administrator or such other powers as the court may direct.

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Four

Reference	Description
ET §9-109	Distribution to a minor
ET §13-201	Appointment of guardian
ET §13-202	Venue
ET §13-203	Preservation and application of property
ET §13-204	Authorization of specific transaction without appointment of guardian
ET §13-205	Effect of adjudication
ET §13-206	Guardian generally
ET §13-207	Persons entitled to appointment as guardian
ET §13-208	Bond of guardian
ET §13-209	Inventory and accounting
ET §13-210	Petition for orders granting relief
ET §13-211	Procedure in protective proceedings
ET §13-212	Degree of care and skill of guardian
ET §13-213	Powers
ET §13-214	Powers and duties of guardian in distribution
ET §13-215	Limitation of powers of guardian imposed by will or court
ET §13-216	Liability for breach of fiduciary duties; right of purchases
ET §13-217	Recording
ET §13-218	Compensation and expenses of guardian
ET §13-219	Protection of person dealing with guardian
ET §13-220	Termination of appointment of guardian
ET §13-221	Judicial proceedings for termination
ET §13-222	Powers of foreign fiduciaries
ET §13-306	Same-In absence of express authority
ET §13-501	Payment or delivery of money or chattels
ET §13-502	Deposit of money distributable from trust, estate or other source
ET §13-503	Powers exercisable directly by minors
ET §13-504	Release of financial
Rule 10-104	Show cause orders
Rule 10-301	Petition for appointment of a guardian
Rule 10-302	Service; notice
Rule 10-303	Advice of rights
Rule 10-304	Hearing
Rule 10-305	Administration of guardianship of the property
Rule 10-701	Scope
Rule 10-702	Bond – Fiduciary estate
Rule 10-703	Compromise of claim or dispute

Rule 10-704	Titling of assets
Rule 10-705	Restricted account
Rule 10-706	Accounting
Rule 10-707	Inventory and information report
Rule 10-708	Fiduciary's Account and report of trust clerk
Rule 10-709	Transfer of fiduciary estate to a foreign fiduciary
Rule 10-710	Termination of a fiduciary estate final distribution
Rule 10-711	Resignation of fiduciary and appointment of substituted or successor
Rule 10-712	Removal for cause or other sanctions

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

Any interested person may file a petition requesting a court to appoint a guardian of the property of a minor. The guardianship is to be filed in the county where the minor resides or if the minor is a nonresident the guardianship is filed in the county in which a petition for the guardianship of the person may be filed, or in the county where any part of the property is located.

In order to establish a guardian of the property the following is required:

Petition for Guardianship – in compliance with Rule 10-301(c)	(Form 1313)*
Guardianship Show Cause – if minor is under the age of 10 the show cause may be waived see Rule 10-302	(Form 1322)*
Notice to Interested Persons (Person)	(Form 1325)*
Notice to Interested Persons (Property)	(Form 1325)*
Order Appointing Guardian of the Property	(Form 1323)*
Filing Fee - \$20.00	

Additional Requirements if applicable:

Guardianship Bond - the court may order a bond for any guardianship but is not required if (a) assets do not exceed \$10,000.00, and (b) guardian cannot transfer assets without court approval, and (c) consists only of cash deposited in a restricted account	(Form 1317)*
Restricted Account Form – if ordered by the court the guardian shall file proof of the opening of a restricted account	(Form 1319)*

Within 60 days after jurisdiction has been assumed or a guardian has been appointed, the guardian shall file an inventory and information report:

Inventory / Information Report	(Form 1318)*
---------------------------------------	------------------------------

The guardian shall file each year an account. The end of the accounting year shall be the anniversary of the date upon which the court assumed jurisdiction over the estate or appointed the guardian. **The account shall be filed not later than 60 days after the end of the accounting year, unless the court extends the time for good cause shown.**

Account

(Form 1320)*

Grounds for the termination of a guardianship shall include:

- (1) the occurrence of the event specified in the instrument creating the estate;
- (2) the distribution by the guardian of all remaining assets of the estate in a manner authorized by the instrument creating the estate;
- (3) the attainment by a minor of the age of majority;
- (4) the emancipation of a minor who has not attained the age of majority
- (5) the death of a minor; or
- (6) any other good cause for termination

Within **45 days** after the guardian discovers that the grounds for termination exist, the guardian shall file a petition requesting the court to terminate the estate. If the guardian has not timely filed the petition, an interested person may file a petition requesting the court to terminate the estate. The petition shall be signed and verified and contain the following:

- (1) petitioner's interest in the estate;
- (2) the name and address of each interested person entitled to notice of the petition;
- (3) a statement of facts establishing the grounds for termination; and
- (4) documentation as set forth in Rule 10-710(e)

If the petitioner is the guardian, the petitioner shall file with the petition a final account with the proposed final distribution of any remaining assets of the estate. The accounting shall cover any period which has not been previously covered by an annual account. The petitioner shall give notice of the filing to the persons named as distributees in the account, to other persons entitled to notice of the accounts and to all other persons designated by the court. The notice shall consist of mailing by ordinary mail a copy of the petition and a show cause order issued pursuant to Rule 10-104.

***Guardianship forms are not state mandated forms but are in compliance with Maryland Rules and have been established for convenience.**

All forms referenced are located in the appendix

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Four
GUARDIANSHIP OF THE PERSON OF A MINOR

Reference	Description
ET §13-101	Definitions
ET §13-102	Purposes and construction
ET §13-103	Verification
ET §13-104	Notice
ET §13-105	Jurisdiction
ET §13-106	Orphans' Court
ET §13-107	Register of Wills
ET §13-701	Testamentary appointment of guardian of a minor
ET §13-702	Court appointment of guardian of a minor
ET §13-703	Bond; accounting; compensation
Rule 10-101	Applicability of title; jurisdiction
Rule 10-103	Definitions
Rule 10-104	Show Cause Orders
Rule 10-105	Waiver of notice
Rule 10-106	Appointment of attorney or investigator
Rule 10-107	Assessment and waiver of fees and costs – Guardianships
Rule 10-108	Orders
Rule 10-109	Transfer of action
Rule 10-110	Combination of guardianship petitions
Rule 10-201	Petition for Appointment of a guardian of person
Rule 10-202	Certificates
Rule 10-203	Service; notice
Rule 10-205	Hearing
Rule 10-207	Resignation of guardian of the person and appointment of substituted or successor guardian
Rule 10-209	Termination of a guardianship of the person

References: **ET – Annotated Code of Maryland**
 Estates and Trusts Article
 Rule – Annotated Code of Maryland
 Maryland Rules – Volume 2

Guardianship of the Person of a Minor

Register's Policies and Procedures

By Testamentary Appointment:

Appointed by surviving parent in a will, the guardian need not be approved by any court. *E & T §13-701*

By Court Appointment:

If neither parent is serving as guardian of the person and no testamentary appointment has been made, on petition by any person interested in the welfare of the minor, and after notice and hearing, the court may appoint a guardian of the person of an unmarried minor. If the Minor is over the age of 14, the court shall appoint a person designated by the minor unless the decision is not in the best interest of the minor. *E & T §13-702*

**Note - A statement of parental consent to the appointment of a guardian may be required by court.*

Venue:

If the minor is a resident of Maryland, the petition shall be filed in the county where the minor resides. If the minor is not a resident of Maryland, a petition may be filed in any county in which the person is physically present. *Rule 10-201(b)*

Jurisdiction: *E& T 13-105 2009 Supplement and MD Rule 10-109*

- 1) Orphans' Court and Circuit Courts have concurrent jurisdiction over Guardianship of the person of a minor.
- 2) Orphans' Court may preside over Guardianship of the person of a minor if the presiding Judge is a member of the bar.
- 3) Orphans' Court may transfer the matter to the circuit court on finding that the best interests of the child require utilization of the equitable powers of the circuit court.
- 4) Costs of transfer may be waived.

In order to establish a guardian of the person the following is required:

Petition for Guardianship – in compliance with *Rule 10-201(c)*

Guardianship Show Cause – if minor is under the age of 10 the show cause may be waived see *Rule 10-203(a)*.

Notice to Interested Persons - *Rule 10-203(b) & (c)*

Hearing

If no response to the show cause order is filed the court may rule on the petition.

If response to the show cause order objects to the relief requested the Court shall set the matter for a hearing. - *Rule 10-205*

Order for Appointing Guardian of the Person – in compliance with *Rule 10-108*

Filing Fee - \$20.00

Additional Information:

Combination of guardianship petitions- A petition for the appointment of a Guardian of the person of a minor may also include a request for the appointment of a guardian of the person's property. (*Rule 10-110*) Must include additional information requested by *Rule 10-301*.

Bond; accounting; compensation: Guardian of the person of a minor is not required to post bond, file accounts and unless otherwise provided by the will shall not be entitled to any compensation. *E & T §13-703*

Resignation of guardian and appointment of substitute or successor guardian:

A petition to resign may be filed by a guardian of the person who has exercised no control over any property of the minor. Petition shall state the reasons for the resignation and may request the appointment of a substitute or successor guardian. *Rule 10-207*

Termination of guardianship of the person- *Rule 10-209*

Termination not requiring prior notice-

- 1) Petition filed in conformity with Rule 10-209(b) – the court shall terminate a guardianship of the person without prior notice upon finding that either
 - a. A minor has attained the age of majority or
 - b. The minor has died
- 2) Petition may be filed by a minor or by the guardian of a minor. It shall contain or be accompanied by either a copy of the minor person’s birth certificate or other proof of age or a certified copy of the minor’s death certificate.
- 3) Minor may file anytime after age of majority (18). A guardian shall file within 45 days after discovery that grounds for termination exist.

Termination requiring notice-

- 1) A guardianship of the person may be terminated upon the filing of a petition if the court, after notice and hearing, finds that any of the following grounds exist;
 - a. The emancipation of a minor who has not attained the age of majority. If the termination is because of a marriage of the minor, the petitioner shall file with the petition a copy of the marriage certificate.
 - b. Any other good cause for termination.
- 2) Within 45 days after the guardian discovers that grounds for termination may exist, the guardian shall file a petition requesting the court to terminate the guardianship. At any time after discovery of the grounds for termination, the minor or any other interested person may file a petition requesting the court terminate the guardianship.
- 3) Petition must be in compliance with Rule 10-209(c)(4-6)

***Guardianship Forms for Guardian of the Person of a minor are being developed for your convenience, they are not state mandated but will be in compliance with Maryland Rules. The forms will be located on our website for download when they are available.**

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Five

Reference	Description
ET §1-301	All property of decedent; devolution at death
ET §7-202	Appraisals
ET §9-203	Effect of disclaimer
ET §9-209 (c) (d)	Delivery and effectiveness
ET §14-101	General jurisdiction of courts concerning trusts
ET §14-102	Applicability of certain provisions of estates of decedents law to trust
ET §14-103	Commissions
ET §14-104	Judge, clerk, or register of wills not serve as trustee
ET §14-105	Protection of person dealing with trustee
ET §14-106	Division or consolidation
ET §14-301	General enforcement
ET §14-302	Uniform charitable trusts administration act
ET §14-303	Prohibited acts
ET §14-304	Amendment of instrument to conform to Internal Revenue Code
ET §14-305	Distributions
ET §14-306	Judicial determination concerning application of §14-303 and §14-305
ET §14-307	Rights and powers of courts and Attorney General
ET §15-503	Determination and distribution of net income
Rule 6-404	Information report
Rule 6-405	Application to fix inheritance tax on non-probate assets
TG §7-202	Imposition of tax
TG §7-203	Exemptions
TG §7-204	Tax Rate
TG §7-207	In general (valuation of property that passes from decedent)
TG §7-208	Concurrent absolute and less than absolute interests
TG §7-209	Method to value concurrent absolute and less than absolute interests
TG §7-210	Subsequent interests
TG §7-211	Election for special valuation
TG §7-214	Determinations by register
TG §7-215	Tax payment in general
TG §7-216	Person required to pay tax; source
TG §7-217	Time of payment
TG §7-218	Alternative payment schedule
TG §7-219	Prepayment of tax
TG §7-220	Effects of prepayment on subsequent invasion of corpus
TG §7-221	Payment of disqualification of specially valued property; certificate of nondisqualification
TG §7-224	Information report

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

Non-probate assets are assets in which the decedent held a less than whole interest at date of death or assets that had a designated beneficiary at death. Therefore, these assets would not follow the terms of the will or the laws of intestacy.

For decedents dying prior to July 1, 2000 - Any assets less than absolute, and/or assets passing pursuant to a decedent's *inter vivos* trust must be reported to the Register.

For decedents dying on or after July 1, 2000 - Any assets less than absolute, or passing pursuant to a decedent's *inter vivos* trust **to any person other than those named in TG § 7-203 (b)** must be reported to the Register. The definition of property passing from a decedent is found in TG §7-201(d)(1) *et seq.* Attorney General Letter of Advice dated September 8, 1992

Forms Required ¹– Maryland Rules 6-404 and 6-405

Information Report

[\(Form 1124\)](#)

If a personal representative is appointed, this form must be filed within three months after appointment. Maryland Rule 6-404, TG §7-224. Form must be signed by the personal representative. The trust should be reported under Question 3.²

Application to Fix Tax on Non-probate Assets

[\(Form 1125\)](#)

If no personal representative has been appointed, this form must be filed within 90 days of the decedent's death. Maryland Rule 6-405. The form can be signed by any distributor or recipient.

¹ Only one of the forms needs to be filed. ² Transfer to the trust within 2 years of death need not be reported under Question 2 of the Information Report.

Information to be provided

Name, address and relationship of the Joint Owner, Transferee, Successor, Beneficiary and/or Trustee

For a trust, the list must include concurrent, consecutive and contingent life tenants and remaindermen. If anyone mentioned in the trust is no longer considered a beneficiary, the Trustee must state the reason why. The Orphans' Court lacks jurisdiction over Trusts. ET §14-101. If the trust instrument does not name a successor trustee, or the successor trustee has died or refuses to serve, the appointment of a successor trustee is a matter for the Circuit Court.

Formal appraisal by a qualified *disinterested* appraiser including qualification of and verification by the appraiser for real and personal property listed.³

A tax assessment listing the full cash value may be provided in lieu of the appraisal required for real property.

Stocks are to be valued using the averages of the highs and lows as of the date of death or transfer.

The following are required for bonds, notes or debts due the decedent:

denomination, issue and maturity dates, rate of interest, date of death values and series. Series E and EE bonds cannot be reported at face value.

For annuities the following is required:

date of birth for annuitant, number of years term certain, frequency of payments and amount of each payment

List of trust assets valued as of the date of death.

The method of valuing assets is outlined in ET§7-202. Stocks, bonds, bank accounts, etc. must include income and dividends accrued to the date of death. E and EE bonds cannot be reported at face value. The alternate value allowed by the IRS for purposes of the 706 is not allowed for Maryland inheritance tax purposes. Attorney General Letter of advice dated 1/26/94.

Copy of the trust instrument and all amendments.

Original documents are not required.

Date of birth of all life tenants.

Life tenants are those persons (other than the decedent) who receive income and/or principal from the trust assets during their lifetime.

List of expenses to be taken from the trust – if expressly allowed by the trust instrument.

Allowable expenses are subject to ET §8-108 - *"Expenses ordinarily deductible from probate assets to determine clear value for imposition of inheritance tax are likewise deductible from non-probate assets when the instrument creating the non-probate estate expressly provides for the payment of such expenses"*. Op. Att'y Gen. (Feb 21,1996).

Determination of Tax:

Authority to tax - TG §7-202

Exemptions from tax – TG §7-203

Tax Rate - TG §7-204

Concurrent absolute and less than absolute interests – TG §7-209

³ Real Estate only - value of contract of sale entered into by decedent prior to death acceptable; sale price accepted if real estate sold within 3 months of date of death – copy of settlement sheet must be provided.

Time period for fixing tax on non-probate assets and trust assets. TG §7-214.

All non-probate assets must be reported on a timely filed Information Report or Application to Fix Tax on Non Probate Assets. However, since in certain circumstances expenses are now allowed from trusts – 81 Op. Att’y Gen. (Feb. 21,1996) the following must be provided:

1. *the existence of the trust must be reported on an Information Report or Application to Fix Tax and a copy of the trust provided;*
2. *if the assets warrant the filing of a Federal Estate Tax Return (IRS Form 706) or Maryland Estate Tax Return the taxpayer may;*
 - (a) *state in writing that the estate will be subject to the filing of a 706, and that the trust allows for taxes and expenses;*
 - (b) *state in writing that the net value of the trust cannot be determined because there will be Federal Estate tax or Maryland Estate tax payable; and*
 - (c) *request in writing an extension of time to file an amended information report within 10 months from the date of decedent’s death showing the assets valued as of the date of death and listing the expenses;*
3. *only the expenses incurred within 9 months of the date of death may be taken from the trust assets for Maryland inheritance tax purposes;*
4. *the 10 month extension will not be allowed if there is no requirement to file a Federal Estate Tax Return or Maryland Estate Tax Return or where a surviving spouse takes unlimited marital deduction resulting in no Federal Estate Tax.*
5. *the 10 month period may not be extended even if extensions of time are requested for filing Federal and Maryland Estate Tax Returns.*
6. *the time period for billing a trust cannot be extended until a closing letter is received from the IRS – absent extenuating circumstances.*

Disclaimer of jointly held assets or benefits payable upon death (also refer to Chapter 11-4 Disclaimer section)

If a disclaimer is filed for assets reported under question 3 of the Information Report, i.e., IRAs, pension plans, POD accounts, annuities, etc. the asset will devolve upon the contingent beneficiary named in the instrument. If no contingent beneficiary is named in the instrument, then the property will devolve upon the probate estate of the decedent.

For jointly held assets determined by the joint owner(s) to be held for convenience only, each asset must be reported on the information report and **each surviving joint owner** must state in writing that the asset was held for convenience only. The asset(s) must then be reported on the Inventory or the Final Report under Modified Administration.

Disclaimer of Trust Assets (refer to Chapter 11-4 Disclaimer section):

ET §9-203 and ET §9-209 (c) and (d)

Surviving Spouse's interest in trust or other assets:

For decedents dying prior to July 1, 2000 when transfers to spouses were subject to inheritance tax:

Real estate – only the value of the spouse's life estate interest is exempt from tax pursuant to TG §7-203(j)(2).

Personal property (non-real estate) – the spousal exemption of \$100,000 pursuant to TG §7-203(j)(3) is applied to the value of the life estate interest – the exemption is not deducted “off the top.”

IRAs and Qualified Pension Plans - only the spouse's life estate interest in qualified IRAs and Pension Plans is exempt from tax. The remainder value is subject to Maryland Inheritance Tax. Op. Atty. Gen 385 (1991). The gross date of death value of all IRAs and qualified pension plans is the value to be reported. Income tax paid is not a deductible expense - AG Letter of Advice, March 12, 1998.

Caveat: IRAs and pension plans payable for the benefit of non-citizen spouses may be taxed unless the spouse elects to have the interest paid to a Qualified Domestic Trust. IRS §2056(d)(2)(A) Application must be made within 9 months from the date of death.

Non qualified Pension Plans and Annuities - spouse's life estate interest is taxable subject to the exemption pursuant to TG §7-203(j)(3)

Method for calculating a life estate in trust assets:

The following factors are used to determine a life estate:

- (1) the age of the life tenant nearest to the date of death;
- (2) the interest rate for the month in which the decedent died pursuant to IRS § 7520;
- (3) life estate and remainder factor from IRS Publication # 1457 (7-1999)

Calculation of remainder in trust assets:

The remainder may be calculated by either: (i) multiplying the net assets by the remainder factor indicated in the IRS tables using the above formula; or (ii) by deducting the gross value of the life estate from the net trust assets.

The trustee is responsible for the tax – TG §7-216(a)(2). Individual beneficiaries are not billed separately.

If the trust terminates upon the death of the decedent and pours into the probate estate, the gross date of death value of the assets must be reported on the Inventory – [Form 1122](#).

Prepayment of tax on remainder and/or subsequent interests:

Pursuant to TG §7-219(a) Within a reasonable time after the valuation of a less than absolute interest in property that passes from a decedent, an application to prepay the inheritance tax for subsequent interest in the same property may be filed with the register of the county where the inventory was filed under TG §7-225. Also refer to TG §7-210 for subsequent interests.

The Register has determined that the “reasonable time after the valuation of a less than absolute interest” pursuant to TG §7-219(a) stated above is one year from the date of the invoice issued.

Effects of prepayment on subsequent invasion of principal.

TG §7-220.

Effect of deferring payment of tax on remainder and/or subsequent interest:

If no application is made to prepay tax on the remainder within the time allowed pursuant to TG § 7-219, then upon the death of the life tenant, the trustee must report the assets remaining in the trust. The assets must be valued as of the date of death of the life tenant and tax will be due at that time. Mercantile Safe Deposit and Trust Company v. State, 264 Md. 455, 464, 287 A2d 503 (1972). AG letter of advice August 27, 1997.

If trust assets decrease in value, then tax will be due on the value established at the time of death of the original grantor of the trust.

The tax laws in effect as of the date of death of the decedent/grantor control the taxable event and will determine all present and future tax liabilities.⁴

⁴State v. Safe Deposit & Trust Co., 132 Md. 215 (1918); Lilly v. State, 156 Md. 94 (1928); Safe Deposit & Trust Co. v. Bouse, 181 Md. 351 (1943). 42 Opinions of the Attorney General, 384,385 (1957)

All forms referenced are located in the appendix

Please note policies established are subject to change and may not be applicable in every situation.

INFORMATION REPORT

Please note all Personal Representatives must file an Information Report even if taxes are not due.

Duty to prepare and file Information Report

TG §7-224

TG §7-201

Maryland Rule 6-404 –form required

Within 3 months after the grant of letters of administration, a personal representative shall prepare and file with the register who issued the letters a written report that:

- (a) is made under oath
- (b) lists the property as defined in TG §7-201(d)(1) (ii) and (iii) that passes from a decedent; or
- (c) states that the personal representative does not have knowledge of any property or transfer of property required to be reported under (b) above.

Information Report

(Form 1124)

Contents of Information Report

TG §7-201

Question 1(a): TG §7-201(d)(ii). Unless the property was held jointly with a person exempted from inheritance tax under TG § 7-203 the personal representative must report the full date of death value of all property in which a decedent had an interest as joint tenant. Expenses may not be deducted from joint accounts prior to assessing inheritance tax.

The decedent's interest in assets held as tenants in common with any person must be reported on the decedent's inventory.

Joint tenants may state under oath that an asset was held jointly for convenience only and the personal representative must then report the asset on the decedent's inventory.

The personal representative may not make a "convenience only" statement on behalf of a joint owner other than himself.

Question 1(b). The personal representative must report all out of state real and leasehold property for information purposes only. The Register does not require that out of state real property be assigned a value.

Question 2. TG §7-201(d)(iii). Unless the property was transferred to a person exempted from inheritance tax under TG § 7-203 the personal representative must report any transfers made by a decedent within two years of his death except for those made by a bona fide sale for an adequate and full consideration in money or money's worth.

Register's Policy: If the personal representative contends that the transfers were not made in contemplation of death or did not constitute a material part of the decedent's estate he must file an affidavit to that effect.

If the personal representative contends that the decedent established a pattern of annual gift giving in amounts of \$10,000.00 or less he must provide evidence of that pattern of gift giving. The pattern must be for at least three years prior to death. Any acceleration in the pattern of gift giving or significant increase in the amounts gifted will usually be taxable.

Question 3. Interests less than absolute include the retention by the decedent of any interest in any asset either real or personal which passes to another as a result of the decedent's death, unless such person is exempted from inheritance tax under

TG §7-203. Some examples of less than absolute interest are as follows: accounts payable upon death to another person; IRAs and similar qualified pension plans passing to anyone other than a spouse; annuities passing to anyone including a spouse; and a retained life interest in real estate. IRAs and Annuities must be reported at the gross date of death value. Attorney General Letter of Advice dated March 12, 1998.

If annuities are not paid in a lump sum the date of birth of the annuitant, the number of years term certain, the frequency of payments (monthly, quarterly, etc.) and the amount of each payment must be provided.

If the decedent was a life tenant of a trust established by a prior decedent, which interest terminated upon the death of the present decedent, the personal representative should also report the life tenancy under Question 3(c) If the grantor of the trust was a Maryland resident please provide the name of the prior decedent/grantor; the county in which the estate was administered, and if known, the administration number.

For assets held in an *inter vivos* trust established by the present decedent , see the Trust Section of this booklet

Subsequent Reports

TG §7-224(b)

If after filing the report required by ET §7-224(a) the personal representative discovers an omission from the report, the personal representative immediately shall report the omitted property to the register.

Filing revised and corrected documents.

ET §7-105

Whenever a personal representative discovers that a document previously filed by him or a predecessor personal representative is incomplete or erroneous, he shall promptly file a revised and corrected document with the register, reciting the correct information if known by him.

Assets deleted from an Inventory ([Form 1122](#)) because they have later been determined to be joint assets or assets payable upon death must be reported on an amended or supplemental information report.

Duty of Successor Personal Representative to file an Information Report

Maryland Rule 6-404

Appraisals, Appraisers and Qualifications of Appraiser – refer to Chapter 6 – Inventories section of this booklet for requirements.

All forms referenced are located in the appendix

Please note policies established are subject to change and may not be applicable in every situation.

APPLICATION TO FIX TAX ON NON-PROBATE ASSETS

Maryland Rule 6-405

An application to fix inheritance taxes on non-probate assets shall be filed with the register within 90 days after the decedent's death, together with any required appraisal in conformity with Maryland Rule 6-403. The application shall be in the form set forth in Maryland Rule 6-405.

Application to Fix Inheritance Tax on Non-probate Assets

[\(Form RW 1125\)](#)

TG §7-225(c) and (d)

Where there is no formal administration of the estate, i.e., where the decedent's assets:

- (1) qualify for a small estate which does not require the appointment of a personal representative; or
- (2) consist of non-probate property that otherwise would have been reported by the Personal Representative on an Information Report i.e., property in which the decedent had (a) an interest less than absolute in real or personal property over which the decedent retained dominion while alive, including a POD account (b) any interest in any annuity (c) and IRA or other public or private employee pension or benefit plan payable to anyone other than a spouse, (d) any interest in real or personal property for life or a term of years, or (e) any other interest in real or personal property less than absolute (in trust or otherwise)

The property must be reported to the register by:

The Distributor - If there is no formal administration of an estate, each person, other than a personal representative who distributes property that passes from the decedent shall file the inventory required by ET §7-201 within 3 months after the death of the decedent and before distributing the property:

In the case of personal property, it shall be reported with the register in the county where the decedent resided at the time of death; and in the case of real property it shall be reported in the county where the real property is located – TG §7-225(c); and/or

The Recipient – If there is no formal administration of an estate, each person who receives property that passes from a decedent without distribution (i.e., non-probate property that otherwise would have been reported by the Personal Representative on an Information Report), shall file the inventory required by ET §7-201 within 3 months after the death of the decedent. In the case of personal property, it shall be reported with the register in the county where the decedent resided at the time of death; and in the case of real property it shall be reported in the county where the real property is located – TG §7-225(d)

Foreign Decedent: - If the decedent was a resident of another state or country (i.e. a foreign decedent), and (a) owned real or personal property jointly with others and that property had a taxable situs in Maryland, or (b) had an interest in real and personal property titled in the name of an inter vivos trust, and that property had a taxable situs in Maryland, the recipient or distributor must report that property to the Register using an Application To Fix Tax.

Appraisals, Appraisers and Qualifications of Appraiser – refer to Chapter 6 Inventories section of this booklet for requirements.

Register's Policy: In estates in which a personal representative has been appointed the register does not require that both an Information Report and individual Applications to Fix Tax be filed. However, if a recipient, distributor or joint owner has knowledge of assets not known to the Personal Representative it is the recipient's, distributor's or joint owner's responsibility to report those assets to the register pursuant to TG§7-225(d) using an Application to Fix Tax on Non-Probate Assets.

Chapter Six

Reference	Description
ET §7-201	Duty to prepare and file inventory
ET §7-202	Appraisals
ET §7-203	Supplemental inventory; reappraisal
ET §7-204	Revision of inventory
ET §7-205	Inventory of Successor personal representative
Rule 6-402	Form of inventory
Rule 6-403	Appraisal
TG §7-225	Inventory

References: **ET – Annotated Code of Maryland
 Estates and Trusts Article**
 **TG – Annotated Code of Maryland
 Tax General**
 **Rule – Annotated Code of Maryland
 Maryland Rules – Volume 1**

Register's Policies and Procedures

INVENTORY

Duty to prepare and file Inventory.

ET §7-201

Maryland Rule 6-402

TG §7-225(b)

Within 3 months after the appointment of personal representative the personal representative shall prepare and file an inventory of property owned solely by the decedent, and the decedent's interest in tenants in common property. Each item is to be listed in reasonably descriptive detail, indicating its gross fair market value as of the date of death of the decedent, and the type and amount of any mortgage and encumbrance that may exist with reference to the item. For real and leasehold property, a description sufficient to identify the property must be given.

Inventory Summary

[\(Form 1122\)](#)

Inventory Schedule

[\(Form 1123\)](#)

Duty of Successor Personal Representative to file an Inventory.

ET § 7-205

Within three months of the date of his appointment, a successor personal representative shall return either a new inventory to stand in the place of the inventory filed by his predecessor or a written consent to be answerable for the items as listed and valued in the inventory filed by his predecessor.

Supplemental Inventory; reappraisal.

ET §7-203

Whenever property not included in the original inventory comes to the knowledge of a personal representative, or whenever the personal representative learns that the value indicated in the original inventory for an item is erroneous or misleading, he shall make a supplemental inventory or appraisal of the item showing the market value as of the date of death of the decedent, or the revised market value, and the appraisals or other data relied upon and shall file it with the court.

It is sufficient to file a revised inventory with respect to any reappraised item or items, and a revised inventory or appraisal of the entire estate is not required. 59 Op. Att'y Gen. 610 (1974). Filing of revised and corrected documents by personal representative.

ET §7-105

Whenever a personal representative discovers that a document previously filed by him or a predecessor personal representative is incomplete or erroneous, he shall promptly file a revised and corrected document with the register, reciting the correct information if known by him.

Assets determined to be joint assets, or assets payable upon death deleted from an Inventory must be reported to the register on an amended or supplemental Information Report.

Register's policy: Minor revisions to date of death values previously reported on the inventory may be made in the first account when it is filed. Supporting documentation must be provided.

Revision of Inventory at request of the State or an interested person.

ET §7-204

At any time before the estate is closed, the state or an interested person may petition the court for revision of the value assigned to an item of inventory and the court may require revision as it considers appropriate. Unless the personal representative has filed the petition, the court shall hold a hearing upon it.

Contents of Inventory.

ET §7-201

Maryland Rule 6-402

Form of Inventory:

The inventory must consist of a summary page and supporting schedules in the forms set forth in Maryland Rule 6-402

The inventory shall include:

- (1) Real property;
- (2) Tangible personal property, including furs and jewelry but excluding (a) wearing apparel, and (b) provisions for consumption by the family;
- (3) Corporate stocks;
- (4) Debts owed to the decedent, including bonds and notes;
- (5) Bank accounts, building, savings and loan association shares, and money
- (6) Debts owed to the decedent by the personal representative; and
- (7) Any other interest in tangible or intangible property owned by the decedent that will pass to a beneficiary pursuant to the decedent's will or by intestate succession.

Appraisals.

ET §7-202

TG §7-225

Maryland Rule 6-402

Appraisals must reflect the actual date of death value. Appraisals containing the word "approximate" or similar qualifying words are not acceptable.

A personal representative may appraise the following:

- (1) Motor Vehicles – ET§7-202(d) - Schedule C

Instead of an appraisal of the fair market value, a motor vehicle may be valued by a personal representative on the basis of the average value of the motor vehicle set forth in: (a) The National Automobile Dealers' Association official used car guide; or (b) any substantially similar price guide designated by the register.

The Register will, upon request by the personal representative, value a motor vehicle if the personal representative provides the year, make, model and VIN number, and the vehicle is listed in the NADA guides maintained in the office of the Register of Wills. Valuations by the Register do not take into consideration the condition of the vehicle or the mileage.

- (2) Corporate stocks listed on a national or regional exchange or over the counter securities - Schedule D

For publicly traded corporate stocks, the personal representative must provide a list of the securities showing the number of shares held, the per-share value of each and a total value of each block of shares. The value is determined by using the average of the high and low price on the date of death. For a week-end death, the value is determined by using the average of the Friday and Monday highs and lows.

- (3) Debts owed to the decedent including bonds, notes and loans made by the decedent to others which remain unpaid - Schedule E

For debts the personal representative must provide an amortization schedule evidencing the outstanding balance due as of the date of death.

For Series E and EE Savings Bonds, the personal representative must provide a list of bonds including the issue date, the face value and date of death value of each bond.

For Series H Bonds the personal representative must provide a list of the bonds which are to be reported at face value.

Treasury bills and notes – the personal representative must provide the issue/maturity date, the face value, and the date of death value and, if appropriate the rate of interest.

Accrued interest and dividends: Interest accrued and dividends declared to holders of record up to the date of death of the decedent must be reported in addition to the assets generating the interest or dividend.

(4) Bank Accounts and money – Schedule F

The personal representative must provide a list of all bank accounts and include the name of the bank, type of account, i.e., checking, savings, CD etc., account number and date of death balance. Personal representative must report the total of any cash in the possession of the decedent.

(5) Certain items reported under Schedule G

A personal representative may value IRAs, annuities and life insurance proceeds payable to the estate or which have no named beneficiary. IRAs and Annuities must be reported at the gross date of death value. Attorney General Letter of Advice dated March 12, 1998

A personal representative must obtain an appraisal by a qualified appraiser for all other categories.

ET §7-202(a)(3)

ET §7-202(c) Real estate. For decedents dying on or after January 1, 1998, (except for property assessed for property tax purposes on the basis of its use value, e.g., farmland, etc.) instead of an appraisal real and leasehold property may be valued at the full cash value for property tax assessment purposes, as of the most recent date of finality.

Effective for decedent dying on or after October 1, 2009, the contract sales price for real property may be used if the settlement statement shows the sale was an arms length transaction and occurred within 1 year of the date of death.

Register's policies - tangible personal property: If the personal representative has sold the tangible personal property to a disinterested person prior to an appraisal, the personal representative may petition the court to accept the gross sales price of real estate in lieu of a formal appraisal.

Appraisers:

ET §7-202(e)

The personal representative may employ **a qualified and disinterested appraiser** to assist the personal representative in ascertaining the fair market value, as of the date of death of the decedent, of an asset the value of which may be fairly debatable. Different persons may be employed to appraise different kinds of assets included in the estate. The name and address of each appraiser shall be indicated on the inventory with the item or items the appraiser appraised.

Register's policies – partnership interests. An IRS Form 1065 K-1 is not acceptable as a formal appraisal of partnership interests.

Qualifications of Appraiser:

Maryland Rule 6-403(a)

When an appraisal is required, the appraisal shall be prepared and executed by each appraiser named in the inventory, other than the personal representative. The appraisal shall (1) describe briefly the appraiser's qualifications, (2) list in columnar form each item appraised and its market value as of the date of death of the decedent, and (3) be verified substantially in the following form: "I solemnly affirm under the penalties of perjury that I appraised the property listed in this appraisal on the _____ day of _____, _____, and that the appraisal was done impartially and to the best of my skill and judgment. "

Chapter Seven

Reference	Description
ET §7-502	Proposed payment to personal representative or attorney
ET §7-601	Compensation of personal representative and special administrator
ET §7-602	Compensation for services of an attorney
ET §7-603	Expenses of estate litigation
Rule 6-414	Notice of proposed payment to personal representative or attorney
Rule 6-416	Attorney's fees or personal representative's commissions

References: **ET – Annotated Code of Maryland
Estates and Trusts Article**
 **Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

A Personal Representative is not permitted to be compensated for services in a small estate pursuant to E&T §-604(3).

In a *regular estate* and under *modified administration*, the attorney for the estate and /or the personal representative are entitled to reasonable compensation for services rendered in the administration of the estate pursuant to E&T §7-601 & §7-602. (unless the will provides for larger measure of compensation)

If the property subject to administration is:	Commission may not exceed:
Not over \$20,000.....	9%
Over \$20,000.....	\$1,800 plus 3.6% of excess Over \$20,000

Any payment out of estate funds made to the attorney for the estate and/or the personal representative are only permitted after filing of the following applicable information:

1. If payment is for a debt, commission or fee which was generated prior to the decedent's death, or is not related to the administration of the estate, a notice of the payment stating the amount and the details for the basis of the payment, must be sent to all interested persons including all claimants.
2. A petition is not needed if the combined sum of the commissions and fees does not exceed the amount in E&T- §7-601; **and** each unpaid creditor **and** all interested persons consent in writing to the payment; **and** the signed written consent form states the amount of payment and is filed with the Register. (When rendering the account, the personal representative must designate any payment made under this section.)

Consent to Compensation for personal Representative and/or Attorney **[\(Form 1138\)](#)**

3. A petition setting forth in detail the services performed and the amount of compensation requested for said services must be filed with the register of wills and include a signed verification of the facts and a certificate of notice to all interested persons, including claimants. An order of the court approving the fees must be signed before payment is permitted. (Note the court will not consider petitions in excess of the maximum allowable without time sheets detailing the work performed being attached. It is also encouraged to obtain consents of all interested persons for fees in excess of the maximum allowable whenever possible.)

Travel expenses, postage, phone bills etc...are considered part of the personal representative's commission and therefore should be included as such and not as an additional expense of the estate.

Maryland has no jurisdiction over the fees of an attorney or personal representative of an ancillary estate in another jurisdiction and cannot be paid out of the Maryland Estate; therefore the allowance and payment of these fees out of the ancillary estate are subject to the statutes of the state where the assets are administered.

ALL payments to a personal representative or the attorney for the estate are subject to these requirements and guidelines.

If the personal representative or attorney performs other duties for the estate such as CPA work, home repairs, account brokerage, etc., the payment for such services in addition to the attorney's fees and commissions claimed may only be made upon approval by the Court.

(The purpose of this statutory requirement is to ensure that compensation is fair and reasonable, which cannot be determined by the person making payment when that person is the same person that is being paid.)

All forms referenced are located in the appendix

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Eight

Reference	Description
ET § 8-106	Funeral Expenses – payment, allowance & petition of creditor
Rule 6-415	Petition and order for funeral expense

References: **ET – Annotated Code of Maryland
Estates and Trusts Article**
**Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

Funeral Expenses are guided by a statutory allowance. However, if the estate is solvent, funeral expenses may be allowed in excess of the allowance with either the courts approval or if the will directs an unlimited payment or payment in the discretion of the Personal Representative.

A petition may be required in the following instances:

1. In a testate estate where the will does not contain a funeral clause indicating the payment of unlimited funeral expenses and the total funeral expenses exceed the statutory maximum.
2. If the decedent died without a will or the will does not direct the payment of funeral expenses and the expenses total more than the statutory allowance.

Petition and Order for Funeral Expenses

(Form 1130)

The Statutory Allowances pursuant to ET §8-106 are as follows:

Date of Death	Allowance
Prior to 7/1/71	\$500.00
7/1/71 to 6/30/83	\$1,200.00
7/1/83 to 6/30/88	\$1,800.00
7/1/88 to 6/30/91	\$2,500.00
7/1/91 to 12/31/97	\$3,500.00
1/1/98 to 9/30/05	\$5,000.00
10/1/05 to present	\$10,000.00 (remains \$5,000 for Small Estates)

The personal representative shall pay funeral expenses within six months of the first appointment of the personal representative. If the funeral expenses are not paid within six months, a creditor may petition the court to require the personal representative to show cause why he should not be compelled to pay the funeral expenses. The personal representative may be ordered to make the payment within ten (10) days of the service of the order. See Estates and Trusts §8-106 (c).

If an estate is insolvent, the funeral expenses are limited to the statutory maximum and must be paid in the order of payment as directed by Estates and Trusts §8-105 (a).

Allowable Funeral Expenses may include the following:

1. Any funeral home charges
2. Cemetery charges including perpetual care for the grave site up to \$500.00
3. Headstone/ monument charges
4. Cremation charges
5. Burial clothes
6. Minister payments
7. Charges for organists and/ or soloist
8. Charges for the church
9. Charges for pallbearers, etc.
10. Cost of airline tickets to transfer the body to the place of burial
11. Cost of airline/ travel of 1 person to accompany the body.
12. Cost of wake/ reception after the service
13. Flowers
14. Thank you cards
15. Printing charges for newspaper obituaries
16. Travel for people to attend the funeral- only if directed by the will – this is allowed as a distribution and is subject to inheritance tax

If a petition is required, [RW form 1130](#) is available or you can see MD Rule 6-415 for the format for filing a funeral petition. If the total of the funeral expenses are in excess of the statutory allowance, vouchers are required in the form of invoices, receipts or cancelled checks. A Certificate of Service is required notifying all interested persons unless consents are provided to the amount requested or the personal representative is the only person receiving from the estate. If a certificate of service is provided, the petition will be submitted to court for consideration on the 24th day from the date notice was sent. It may be advantageous to file the petition in advance of the filing of an account or a Final Report under Modified Administration if time constraints are a concern.

Traveling expenses for the minister or the family to a distant point for funeral services are unjustifiable expenses of the estate.¹

Expenses of transportation incurred in traveling for the purpose of arranging the decedent's funeral are improper and not allowable.²

Inheritance tax does not apply to the receipt of the first \$500.00 of property that passes from a decedent under a will for the perpetual upkeep of graves.³

¹ 37 Opinions of the Attorney General 218

² Letter of Advice of the Attorney General dated September 1, 1978

³ Tax General §7-203(c)

All forms referenced are located in the appendix

Please note policies established are subject to change and may not be applicable in every situation

Chapter Nine

Reference	Description
ET §7-301	<i>Accountings</i> - Duty to account
ET §7-302	Initial account
ET §7-303	Subsequent accounts
ET §7-305	When to render accounts
ET §7-501	Notice of filing of account; exceptions to account
Rule 6-417	Accounts
ET §5-707	<i>Final Reports</i>
ET §5-709	Closing of estate (modified)
Rule 6-455(d)	Final Report
ET §3-201	<i>Expenses</i> - Family Allowances
ET §8-105	Order of Payment
ET §3-101	<i>Distribution</i> - Order of distribution of net intestate estate
ET §3-102	Share of surviving spouse
ET §3-103	Division among surviving issue
ET §3-104	Distribution when there is no surviving issue
ET §3-105	Escheat
ET §3-106	Advancement
ET §3-107	After-born child
ET §3-108	Inheritance from illegitimate person
ET §3-109	Person related to decedent through two lines
ET §3-110	Certain heirs not surviving decedent for 30 days
ET §4-401	Legatee failing to survive testator by 30 days
ET §4-402	Presumption that will passes all property
ET §4-403	Lapse
ET §4-404	Void or inoperative legacies
ET §4-405	Change in securities
ET §4-406	Exoneration
ET §4-407	Exercise of power of appointment
ET §4-408	Will passes entire interest of testator
ET §4-409	Legacy for charitable use
ET §4-410	“Die without issue”, and similar phrases
ET §4-411	Legacy to inter vivos trust
ET §4-412	Legacy to testamentary trust
ET §4-413	In terrorem clause

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

ET §9-102	Renunciation by testamentary trustee
ET §9-103	Order in which assets appropriated; abatement
ET §9-104	Distribution in kind
ET §9-105	Execution and delivery of evidence of title
ET §9-106	Effect of distribution
ET §9-107	Partition for purpose of distribution
ET §9-108	Where legatee not found, or resides outside of United States
ET §9-109	Distribution to a minor
ET §9-111	Release
ET §9-112	Distribution by Court
ET §13-306	Same - In absence of express authority
ET §13-501	Payment or delivery of money or chattels
Rule 6-442	Proposal for distribution of property
Rule 6-443	Meeting of distributees and distribution by court
Rule 6-444	Petition for partition on sale of property
ET §10-101	Closing estates - Effect of final approval of final account
ET §10-102	Liability of heir or legatee to creditor
ET §10-103	Limitations
ET §10-104	Subsequent administration
ET §10-105	Confirmatory acts
Rule 6-421	Termination of appointment of personal representative
Rule 6-422	Administration after final account – Newly discovered property

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies

ACCOUNTINGS

A Personal Representative has a duty to file written accounts of his management and distribution of estate property with the Register of Wills. (ET§7-301)

An initial account shall be filed within 9 months of the personal representative's appointment and shall include all estate transactions from the date of death to the filing of the account. Subsequent accountings shall be filed the earlier of nine months from the filing of the previous accounting or six months from recording of the approval of the previous accounting until the estate is closed. The period covered in subsequent accountings must include all transactions occurring from the ending date of the previous accounting to the ending date of the current account.

Prior to preparing the accountings and Modified Final Reports the following should be done:

- Review the Claims Docket in the Register of Wills Office to verify that all outstanding claims against the estate have been paid in full, released or formally disallowed.
- Contact the Audit Department for any outstanding court costs. In addition to the standard Probate Fees, per ET §2-206, certified mail charges are incurred for each person who is mailed a Notice of Appointment published in the newspaper, and copies and letter of administration charges may be charged against the estate ledger until the final account is filed. Inheritance tax, Probate Fees and other costs due the Register of Wills are due when the account is filed.

All accountings must contain the following as applicable:

- The total date of death value of all assets solely held by the decedent as inventoried.
- All principal receipts of the estate during the period covered, setting forth the amount of each receipt, the date received and a brief description of the nature of the receipt.
- Each transaction of estate asset including but not limited to; purchases, sales, leases, transfers, settlements; should be itemized indicating the date and a description of each of these transactions. The description of the transaction must indicate the affect of the transaction on the estate assets i.e. gains or loss including the gain or loss and the basis used in calculating the affect.
- Each receipt of income including rents collected, interest earned and dividends received.
- The total gross value of the estate to be accounted for in the account.
- An itemized list of all payments and expenses disbursed on behalf of the decedent or the estate during the period covered by the account. The disbursement schedule should include the date, amount and a brief description of the payment indicating the payee and the nature of the expense. See also notes on expenses below and Rule 6-417.
- Each distribution made during the accounting period or proposed distribution to estate beneficiaries and calculation of the tax thereon as applicable. This schedule should indicate to whom distribution was/will be made and the relationship of the beneficiary to the decedent. See also notes on distributions below.
- The value of any assets being retained by the personal representative for future accounting. The asset should be itemized indicating the carrying value for each asset retained. A brief explanation of the necessity for the retention of assets must be included

- The personal representative must attach to the account a verification of account pursuant to Rule §6-123 that the account is true and complete for the period covered in the accounting; and a certificate of service in compliance with Rule 6-417 (d). The certificate of service must indicate the names and current addresses of the interested persons on whom notice was served.

The order approving the Account becomes final 20 days after it is docketed Rule 6-417 (g). Distribution as reflected in the account must be made within 30 days after the order approving the account becomes final. (Rule 6-417 (d) [5]).

MODIFIED ADMINISTRATION FINAL REPORTS

A verified final report under modified administration shall be filed not later than 10 months from the date of the personal representative's appointment. (ET §5-702 [3])

In order to avoid delays in the approval of a Final Report or closing a Modified Estate the following are notes and recommendations of the Audit Department:

- All Claims should be disallowed not later than 10 months from the date of the personal representative's appointment or satisfied on or before the filing of the Final Report.
- Taxes and fees are due with the filing of the Final Report, they must be paid before the Final Report is approved.
- All petitions, including but not limited to Funeral Expenses, Personal Representative Commissions and Attorney Fees should be filed as early as possible to avoid delays in the approval of the Final Report.
- A prompt response to all notices and Audit Requests is recommended in order to avoid revocation. All Audit Requests should be complied with prior to the distribution of assets and final distribution must be made within 12 months of the personal representative's appointment or Modified Administration will be revoked. A modified estate must close within 13 months of the personal representative's appointment. (ET §5-709)
- We recommend filing any request for refund of MET to be paid directly to the Register of Wills (form MET 2 ADJ.) as early as possible to avoid any complications due to delays.

The final report shall be filed in the form designated in Rule § 6-455 (d)

Final Report Under Modified Administration

[\(Form 1143\)](#)

A Final Report must contain the following (ET §5-707):

- A statement indicating that the estate continues to qualify for modified administration.
- An Inventory is not required in a Modified Administration, therefore schedule A of the Final Report must itemize all reportable property, indicating the basis of the valuation of the property and include all information normally required when filing an Inventory. Specific details about assets including but not limited to; bank account numbers, type of account, name of bank, names of stocks, numbers of shares and value per share; must be provided on schedule A of the Final Report. Appraisals or copies of real property assessments are required at the time of filing of the Final Report, as are appraisals for tangible personal property and any other item that the Personal Representative is not authorized to appraise, i.e. partnerships.
- Schedule B must contain an itemized list of all payments and expenses disbursed on behalf of the decedent or the estate. The schedule should include the date, amount and a brief description of the payment indicating the payee and the nature of the expense, as is required in an account for a regular estate.

- Schedule C must reflect each distribution made or proposed distribution to estate beneficiaries, as reflected in the will or pursuant to the laws of intestacy, and calculation of the tax thereon as applicable. This schedule should indicate to whom distribution was/will be made.
- The Final Report must be mailed to all interested persons and a certificate of service must be completed and attached.

Certificate of Service of Final Report Under Modified Administration

(Form 1144)

- If Modified Administration is revoked, the estate shall proceed under Administrative Probate and a formal Inventory and Account are required.(ET 5-708 [c])

Except as otherwise noted, Modified Administration is subject to the same rules and provisions as a regular Administrative Probate proceeding. (ET §5-710)

EXPENSES

The account or Final Report of a Personal Representative must indicate the expenses paid by the personal representative on behalf of the estate or decedent as noted above. Unless the will provides otherwise and subject to applicable legislation all expenses incurred in connection with settling an estate including debts, funeral expenses, family allowances, attorney and personal representative compensation, and court costs shall be charged as provided for in ET 15-503.

If a will has a valid tax clause¹ directing the payment of taxes from the residuary estate, then taxes may be claimed as an expense of the estate. If there is not a valid tax clause, then taxes are apportioned to the persons receiving the property and reduced from principal distributions prior to the assessment of inheritance taxes. The inheritance taxes must have been assessed at the accelerated rate in order for them to be claimed as an expense on an account or Final Report. Inheritance taxes on final residual distributions are reduced from the distributions rather than claimed as an expense. Prepaid Inheritance taxes paid to this office or taxes withheld or held in escrow during settlement of a real property sale are not expenses of the estate. Until inheritance taxes are charged on reported distributions prepaid inheritance taxes remain a credit on the estate ledger which must be carried forward in the assets retained.

Travel expenses of a personal representative or attorney are generally included in their commissions or attorney fees. See annotations to ET §7-601.²

Travel expenses to attend the funeral are not allowable expenses for the purpose of reducing the inheritance tax. Any payments made for travel expenses to the funeral are considered interim distribution to the residuary beneficiaries or heirs at law or they may be disallowed.

Expenses for out of state real property are reportable and allowable expenses provided that the expenses have not been claimed against the foreign estate proceeding. Additionally if the property is earning rental or other income this must be reported and accounted for in the applicable account.³

The Personal Representative's expenses for estate litigation shall be allowed regardless of the outcome of the litigation if the proceeding is defended or prosecuted in good faith with and just cause. (ET §7-603)

Attorney Fees for estate litigation:

If the attorney receiving payment is also the attorney of record he must submit a notice of proposed payment to all claimants and interested parties as well as with the Register's office pursuant to ET §7-502 and Rule §6-414.

If the attorney is only representing the estate in the litigation he must submit a bill to the estate and may be paid; a petition is not necessary in this instance.

When an estate has insufficient assets to pay all expenses in full, they must be paid in the order of priority as established in ET §8-105. In this instance; funeral expenses are reduced to the maximum per statute regardless of a funeral clause unless petitioned for and ordered.

The personal representative may claim as an expense of the estate a family allowance for the surviving spouse. For each unmarried minor child of the decedent a family allowance shall be paid by the personal representative as provided in ET §13-501.

The allowance varies depending on the date of death of the decedent:

¹See also Letter of Advice of the Attorney General dated April 13, 2000.

²See also 59 Opinion of the Attorney General 613 (1974)

³See also Letter of Advice of the Attorney General dated January 24, 1983

Prior to 1974- \$500.00 for a spouse and \$1,000.00 for a spouse and surviving children of the decedent

Date of Death	Spouse	Each surviving minor child
7/1/74 to 6/30/81	\$1,000.00	\$ 500.00
7/1/81 to 6/30/91	\$2,000.00	\$1,000.00
7/1/91 to present	\$5,000.00	\$2,500.00

Unless the will provides otherwise, expenses for shipping personal property or repair or upgrade other than necessary to maintain and preserve the assets are not allowable deductions for reduction of taxes. They may, however, be reduced from the distributions to the legatees after inheritance taxes are assessed.

DISTRIBUTION

If the estate is not effectively distributed by a will, a decedent dies without a will or a will is not admitted to probate, distribution shall be made in accordance with ET Title 3. (ET §3-101)

In an intestate estate the identity of the heirs of the decedent will determine the distribution to a spouse. If there are surviving minor children, the spouse receives one half of the net estate. If there are surviving adult children, the spouse receives the first \$15,000.00 plus one half of the remaining balance for distribution. In the event a decedent does not leave surviving children but does leave a surviving parent, the spouse's share is the same as if there were adult children. If there are no surviving issue or parents the spouse shall receive the entire estate. (ET §3-102)

After reducing the available balance for distribution by the spouse's share, the remaining net estate shall be divided equally among the surviving issue by representation. When there is no surviving issue the net estate after the spouse's share shall be distributed in accordance with ET §3-104.

In the event a decedent dies without leaving a person who is entitled to receive under an intestate distribution, the estate shall be converted to cash and distributed as indicated by ET §3-105. Under these circumstances distribution shall be made to the Department of Health and Mental Hygiene if the decedent was recipient of long term care benefits under the Maryland Medical Assistance Program, or if not then to the Board of Education in the county where the estate was opened. If after payment is made, to the Department of Health and Mental Hygiene or the Board of Education a relative within the fifth degree is found who was living at the time of the decedent's death, a claim for refund may be made to the Department of Health and Mental Hygiene or the Board of Education. If the claim is timely filed, and approved the claimant is entitled to a refund without interest of the amount distributed by the estate. See ET §3-105 and ET §9-108.

A gift of property by the decedent, prior to his death to an heir of his estate, may be considered an advancement of the heir's distribution if the following applies: the decedent dies intestate as to that part of his net estate and either the decedent or the heir has declared the gift an advance in writing. See also ET §3-106

A child of the decedent who was conceived prior to death but not born until afterward shall inherit as if he had been born in the lifetime of the decedent. However no other after born relationship may be considered in this way. See ET §3-107.

Property of an illegitimate person passes in accordance with the rules of intestate distribution, however the father and his relations only receive if the decedent is treated as a child of the father per ET §1-208.

A person who is related to the decedent through two lines of relationship would receive only a single share representing the relationship, which would entitle him to the larger share. ET §3-109.

If a descendant, ancestor or an ancestor's descendant fails to survive the decedent by thirty full days he shall be determined to have predeceased the decedent for the purposes of intestate succession and is not entitled to the rights of an heir. If the time of death of the decedent or other person who would otherwise be an heir can not be determined in order to establish that the person survived the decedent by the full thirty days he shall be determined not to have survived for the required time period.
ET § 3-110

In order to receive from an estate, a legatee, other than a spouse, must survive the testator by 30 full days or he is considered to have predeceased the testator. If, however the will expressly indicates that the legatee is considered to have survived or places an alternate limit or requirement on survival the legatee or his estate may receive from the estate. ET §4-401. For additional limitations on the right to inherit see ET §3-111 and ET §3-112.

A decedent's will is presumed to pass all of the testators property owned at the time of death. This includes property acquired after the execution of the will. See ET §4-402

Absent a provision in the will of a decedent to the contrary, if a legatee dies before the decedent, determination as to whether his legacy lapse is made in accordance with ET §4-403.

Unless the will indicates otherwise, property failing to pass because a legacy is void or inoperative, or it lapsed, the property shall be distributed as part of the estate to those legatees who would have received had that legacy not existed in the will. When a residuary distribution

is void or inoperative the other residual legatees receive a proportionate share of the void legacy. ET §4-404

If a will leaves a specific bequest of securities and, after the execution of the will and death of the testator, the personal representative receives a distribution of securities of the same or another entity the bequest includes the additional or substituted securities unless the will expressly indicates a contrary intent. ET §4-405

Unless the will indicates otherwise, a specific bequest of property passes subject to a security interest or lien on the property which existed at the time of execution of the will or which is a renewal extension or refinancing. If a security interest is attached or created following the execution of the will, the legatee is entitled to exoneration.
ET §4-406

A residuary clause in a will can only exercise a power of appointment in the following instances: If the will expressly indicates the intent to exercise the power of appointment, or the instrument creating the power of appointment fails to provide for the disposition of the subject matter of the power if it is not exercised. ET §4-407

The will passes the decedent's entire interest in property that is the subject of a legacy unless the will indicates otherwise. ET §4-408

A provision in a will purporting to penalize an interested person for contesting a will or initiating other proceedings related to the estate is void if there is probable cause for instituting the proceeding. ET §4-413

When bequests exceed the amount available to distribute the bequest shall abate. Abatement within each classification is in proportion to the amounts of property each of the legatees or heirs would have received, had full distribution of the property been made in accordance with the terms of the will. See ET §9-103 for the order in which assets abate.

Subject to the terms of the will and the needs of administration assets should be distributed in kind to the extent possible. See ET §9-104. A personal representative is required to settle and distribute an estate as promptly as possible. See ET § 7-101. Therefore if an account is not a final account the schedule reflecting the retention of assets must indicate the reason the estate remains open. In the event that the estate appears to be held open unnecessarily, a petition to retain assets may be required. The petition should indicate a detailed account of the difficulty in closing the estate and indicate when the estate can be expected to close. If the petitions and orders to retain assets do not indicate a period of time during which the estate may retain assets each subsequent accounting may require a petition to retain assets. Failure to provide sufficient reasons for the necessity of the estate remaining open may result in the court being requested to issue an order for the personal representative to appear before the court to show cause why a final account should not be filed. A petition to retain assets, like any other petition must contain a verification and certificate of service notifying and providing a copy of the petition to all interested persons. The petition will be held for the twenty-day objection period.

Distribution of a share or legacy may be made to the Board of Education in the county where the estate was opened when the personal representative is unable to locate an heir or legatee and the court has been satisfied of the attempts made to locate the heir. In this instance a petition and order to distribute to the Board of Education must be filed and all interested parties must be notified including the Board of Education.

See ET §9-108.

The personal representative may also file a petition for distribution by court if the interested persons or legatees are not known or if it is not known if an interested person is still alive. This type of petition may also be submitted if there are disagreements regarding the disposition of

tangible property or if there is any objection to the proposed disposition of the realty. If this option is selected the personal representative shall give notice of a meeting of all interested persons to be held on a day designated by the court. The notice must be published once a week for three successive weeks indicating the time date place and purpose of the meeting. The first publication must be no less than 20 days prior to the date of the meeting. On the date of the meeting distribution shall be made under the court's direction. See ET §9-112 and Rules §6-442 and §6-443.

When two or more heirs or legatees are entitled to receive distribution of undivided interests in property of the estate, the personal representative or one of the heirs or legatees may petition the court prior to closing the estate to make partition of or for the sale of the property in lieu of partition. After notice to the interested parties the court may partition the property in the same manner as provided by law for civil actions. See ET §9-107 or Rule §6-444.

When distribution of an estate is made to a minor the court must be informed of the method of distribution. See ET §9-109, 13-306 and 13-501.

A personal representative has several options when making distribution to a minor as follows:

1. If there is not a judicially appointed guardian, the personal representative may petition the court for an order directing that cash be deposited in a banking institution or insured savings and loan association in the name of the minor, where it may draw interest, subject to further order of court. The banking institution shall be named in the order. The personal representative shall deliver the account book to a person who approved by the court. When the minor reaches the age of majority or a guardian is appointed the account book shall be turned over to the minor or the guardian. ET §9-109 (a)
2. The personal representative may file a petition to appoint a custodian and with the approval of the court he may transfer the property to a custodian who shall hold or dispose of the property in accordance with the provisions of the Maryland Uniform Transfers to Minors Act. The personal representative shall subject to court approval designate the custodian who shall be either an adult or a trust company. ET §9-109 (b)
3. If the distribution is of tangible personal property and a guardian has not been appointed the personal representative may make distribution to the person he considers responsible and appropriate subject to court approval. ET §9-109 (c)
4. If a guardian is appointed, distribution may be made to the guardian upon the filing of a copy of his authority authenticated pursuant to 28 U.S.C.A. §1738. See ET §9-109 (d)
5. If a guardian is not appointed, or if he is unknown, payments or delivery of amounts not to exceed \$5,000.00 per annum may be made to the parent or grandparent of the minor with whom he resides. The payer is not under a duty to inquire whether the minor has a guardian. ET §13-501(a)
6. A deposit may be made in a financial institution in the sole name of the minor. The minor may not withdraw any funds without an order of court or until he attains majority. ET §13-501 (b)

Specific bequests must be reduced by the appropriate inheritance taxes unless the will contains a valid tax clause. If the will contains a tax clause, the taxes may be paid at the accelerated rate and claimed as an expense of the estate. Specific bequests made in the form of distributions to a trust are taxed at the accelerated rate. Once a legatee has received his bequest, that person ceases to be an interested person. ET 1-101(i)

Residual distributions may be taxed at either the accelerated rate in the event that it is an interim distribution, or the straight rate and reduced from the distribution if it is a final distribution.

Distributions to a spouse are subject to two exemptions if the date of death was prior to July 1, 2000. The first \$100,000.00 passing to a spouse is tax exempt. All realty passing to a spouse is tax exempt, however if the property is sold it is fully taxable after the spousal exemption of \$100,000.00. If the date of death is on or after July 1, 2000 the entire distribution to a spouse, all lineal heirs and their spouses and brothers and sisters are tax exempt. See Tax General §7-203.

Collateral heirs are defined as: Any person or corporation not identified as exempt to subject to lineal tax or qualify as tax exempt under IRC 501(C)(3) i.e. cousins, nieces, nephews, aunts and uncles. Prior to July 1, 2000 this class of people included brothers, sisters and spouses of any of the lineal heirs.

Direct heirs are defined as lineal descendants and they include grandparents of the decedent, parents of the decedent, spouse of the decedent, children of the decedent or a lineal descendant of a child of the decedent, a spouse of a child of the decedent or a spouse of a lineal descendant of a child of a decedent, brothers and sisters, (child includes stepchild or former stepchild and parent includes stepparent or former stepparent of the decedent.

In the event that probate fees and/or inheritance taxes are overpaid a claim for refund may be filed. For probate fees and court costs, the form is completed and signed by the auditor or deputy handling the closing of the estate and forwarded to the Register for approval. This form is an interoffice form and does not require the personal representative's signature or the Comptroller's approval. For the overpayment of inheritance taxes a refund form is generally completed to extent possible by the auditor, upon review of the final accounting, and forwarded to the attorney of record or personal representative for completion. ([FORM 1140](#)) Attached to the refund form are receipts reflecting the payment of taxes as indicated on the refund form. Upon receipt of the completed form the form is forwarded to the Register for approval, then to the Comptroller for authorization of payment. In the event that someone other than the personal representative, on behalf of the estate, has overpaid inheritance taxes on non-probate assets a refund form may be completed by the payee and upon approval of the non-probate auditor and the Register submitted to the comptroller for authorization of payment. Upon the receipt of authorization this office forwards the refund to the appropriate person.

Claim for Refund of Tax Erroneously Paid

([Form 1140](#))

CLOSING ESTATES

The order approving a final account automatically closes an estate. However if the final account requests, it may also terminate the personal representative's appointment. ET §10-101

After an estate has been closed, a claim that has not been barred may be prosecuted against one or more of the persons to whom property has been distributed. The legatee can not be held responsible for an amount exceeding the amount of his distribution. See ET §10-102.

If no action or proceeding involving the personal representative is pending one year after the estate is closed, the personal representative shall be discharged from any claim or demand of an interested person not including those arising from fraud or an illegal act. See ET §10-103.

If property is discovered after an estate has been closed, the appointment of a personal representative who has not been terminated and the personal representative is willing to

administer after discovered property, he may request an additional letter of administration to administer the additional assets. Upon receipt of the asset, a supplemental account must be filed indicating the receipt of the asset, the nature of the asset, its valuation and appraisal as necessary per ET § 7-202 any expenses in administering the property and distribution of the additional assets per the will admitted to probate or the laws of intestacy. A verification of account and certificate of service must be provided. If the personal representative's appointment has been terminated or the original personal representative is unwilling or unable to administer after discovered assets a petition to reopen the estate and appoint a successor personal representative must be filed. Then the estate would be conducted as any administrative probate proceeding. See also ET §10-104 and Rules §6-421 and §6-422.

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

SAMPLE GUIDE FOR FILING ACCOUNTS

Within nine months of the date of appointment, an initial account must be filed.

The following sample of a First & Final Account should be used as a guide and checklist only. Each account must include the original signatures of all personal representatives and the attorney for the estate, if applicable. Addresses and telephone numbers are also required.

**Questions should be directed to the Register of Wills AUDIT DEPARTMENT at
240-777-9640.**

Account overview

The purpose of an account is to report all financial activity involving probate assets from the date of death of the decedent to the end of the current accounting period. The initial account is due nine months after the date of appointment of the personal representative.

There are two types of accounts, an interim account and a final account. With an interim account, not all estate assets are distributed. After filing an interim account, the estate will stay open and a subsequent account will be due six months from the approval of the account or nine months from the date the last account was filed, whichever occurs first. With a final account, all estate assets will be accounted for and upon the approval of the account, if no exceptions are timely filed, the estate will close. No additional documents will be required by this office after the order approving the final account has become final.

You may prepay probate fees and taxes due to this office; however, probate fees will not be assessed until after the filing of the first account and Inheritance tax will be assessed when distribution is shown in an account. A bill will be sent to you from this office. This does not apply to non-probate tax which is billed separately. (See page 18 – Exhibit D – for calculation of probate fee)

Account checklist

Before submitting your account, make sure the following items are completed and included:

- Verification of the account and certificate of service attesting to the fact that notice of the account has been sent to all interested persons. This page must be signed by all personal representatives and attorney (if applicable). **Form attached (page 11).**
- Account includes a summary page, schedule pages one through seven, and any supporting documentation.
- The CLAIMS DOCKET at the Register of Wills Office has been reviewed prior to the estate closing to verify all claims against the estate have been paid in full, settled, or formally disallowed (see page 18 – Exhibit D - for overview on claims)

- Ensure that all figures balance. The sum of the beginning balance, principal receipts, change in assets, and income should equal the sum of the disbursements, distribution, and if applicable balance retained for future accountings.

Contact the Register of Wills audit department (240-777-9640) for any additional questions you have regarding the proper completion of your account.

NOTE: INHERITANCE TAX RATES ARE DETERMINED BY DATE OF DEATH OF THE DECEDENT AND RELATIONSHIP OF HEIR / LEGATEE TO THE DECEDENT. THIS AFFECTS SCHEDULE 6 ONLY

The following pages show a completed First and Final Account Sample with explanation. You may choose to follow this layout when filing your account.

Chapter Ten

Reference	Description
ET §2-206	Enumeration of fees – regular estate (including guardianship & foreign personal representative)
ET §5-606	Fees – small estate
TG §7-203	Exemptions – taxes
TG §7-204	Tax Rate – (see 1999 supplement for .9%)
HG §6-101	Proof of domestic partnership

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Regular Estate Fee Schedule:

Fees are to be paid at the filing of the first account based on the gross assets. Adjustments to fees will be made on subsequent account(s), if applicable. Probate fees will be assessed at the following rates:

IF THE VALUE OF THE PROBATE ESTATE IS AT LEAST	BUT LESS THAN	THE FEE IS
0	\$ 10,000	\$ 50
\$ 10,000	\$ 20,000	\$ 100
\$ 20,000	\$ 50,000	\$ 150
\$ 50,000	\$ 75,000	\$ 200
\$ 75,000	\$100,000	\$ 300
\$ 100,000	\$250,000	\$ 400
\$ 250,000	\$500,000	\$ 500
\$ 500,000	\$750,000	\$ 750
\$ 750,000	\$1,000,000	\$ 1,000
\$ 1,000,000	\$2,000,000	\$ 1,500
\$ 2,000,000	\$5,000,000	\$ 2,500
\$ 5,000,000	\$-----	\$ 2,500 Plus .02% of excess over 5,000,000

In addition to the probate fees as listed above, the following fees may be charged if applicable:

Claims date of death prior 1-1-98.....	\$1.00
Claims date of death on or after 1-1-98.....	\$3.00
Safekeeping Wills.....	\$5.00
Xerox copies (per page).....	\$.50
Additional letters of administration (each).....	\$1.00
Affixing seal of office to transcript or other record.....	\$1.00
Affixing seal of office to exemplified copy of proceeding (per page)..	...\$2.00
Transcribing papers filed in caveat or other controversial Proceedings when mandate of higher court is filed (per page).....	\$2.00
Copies of a paper or record, including plain certification and Seal, per page or part of a page.....	\$2.00
Entering papers in caveat or other controversial matter, for Each side date of death prior to 1-1-98.....	\$5.00
Each side date of death on or after 1-1-98.....	\$10.00

Small Estate Fee Schedule:

There is a graduated fee schedule (as listed below) based on the gross value of the small estate:

IF THE VALUE OF THE PROBATE ESTATE IS AT LEAST	BUT LESS THAN	THE FEE IS
\$-----	\$ 200	\$ 2.00
\$ 200	\$ 5,000	1% of the value of the small estate
\$5,000	\$10,000	\$ 50.00
\$10,000	\$20,000	\$ 100.00
\$20,000	\$50,000	\$ 150.00

For each additional certificate of letters over four (4) furnished in connection with a small estate, there is a fee \$ 1.00 per letter

Guardianship Fees:

Prior to 1-1-98

For filing and recording (if applicable) petitioners, consents, orders, show cause orders, accounts.....\$2.00 per page

Effective 1-1-98

All filings and entries regarding a guardianship proceeding, a single fee of.....\$20.00

Foreign Personal Representative Fees:

Effective date of death prior to 1-1-98

For filing and recording.....\$2.00 per page

Effective date of death on or after 1-1-98

All proceedings involving Foreign Personal Representative, a single fee of 1% of the gross value of the estate, not to exceed \$100.00

List of Exemptions from Tax General §7-203

(a) *Payments received under employee's pensions or benefit plans.* - The inheritance tax does not apply to the receipt of an annuity or other payment under a public or private employees' pension or benefit plan if the annuity or other payment is not taxable for federal estate tax purposes.

(b) *Family allowance.* - (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Child" includes a stepchild or former stepchild.

(iii) "Parent" includes a stepparent or former stepparent.

(2) The inheritance tax does not apply to the receipt of property that passes from a decedent to or for the use of:

(i) a grandparent of the decedent;

(ii) a parent of the decedent;

(iii) a spouse of the decedent;

(iv) a child of the decedent or a lineal descendant of a child of the decedent;

(v) a spouse of a child of the decedent or a spouse of a lineal descendant of a child of the decedent;

(vi) a brother or sister of the decedent; or

(vii) a corporation if all of its stockholders consist of individuals specified in items (i) through (vi) of this paragraph.

(c) *Grave maintenance.* - The inheritance tax does not apply to the receipt of the first \$500 of property that passes from a decedent under a will for the perpetual upkeep of graves.

(d) *Life insurance benefit.* - The inheritance tax does not apply to the receipt of the proceeds of a life insurance policy payable to any beneficiary other than the estate of the insured.

(e) *Nonprofit organization.* - The inheritance tax does not apply to the receipt of property that passes from a decedent to or for the use of an organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code or to which transfers are deductible under § 2055 of the Internal Revenue Code if the organization:

(1) is incorporated under the laws of this State;

(2) conducts a substantial part of all its activities in this State or in the District of Columbia; or

(3) has its principal place of business in a jurisdiction whose law:

(i) does not impose death taxes on the receipt of property that passes from a decedent to a beneficiary of this State that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code or to which transfers are deductible under § 2055 of the Internal Revenue Code; or

(ii) contains a reciprocal exemption from death taxes similar to the exemption allowed in this subsection.

(f) *Nonresident decedent personal property.* - (1) Except as provided in paragraph (2) of this subsection, the inheritance tax does not apply to the receipt of personal property that passes from a nonresident decedent if, at the time of death, the decedent is a resident of a state or foreign country whose law, on the date of the decedent's death:

(i) does not impose death taxes on the receipt of similar personal property of a resident of this State; or

(ii) contains a reciprocal exemption from death taxes similar to the exemption allowed under this subsection.

(2) The exemption under paragraph (1) of this subsection does not include the receipt of tangible personal property that has a taxable situs in this State.

(g) *\$1,000 limit per person.* - The inheritance tax does not apply to the receipt of property that passes from a decedent to any 1 person if the total value of the property does not exceed \$1,000.

(h) *Small estate.* - The inheritance tax does not apply to the receipt of property that is distributed from an estate that qualifies under § 5-601 of the Estates and Trusts Article for administration as a small estate.

(i) *State, county or municipal corporation.* - The inheritance tax does not apply to the receipt of property that passes from a decedent to the State, a county, or a municipal corporation of the State.

(j) *Income on probate assets.* - The inheritance tax does not apply to the receipt of property that is income, including gains and losses, accrued on probate assets after the date of death of the decedent.

(k) *Holocaust moneys.* - (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Holocaust victim" means an individual who died or lost property as a result of discriminatory laws, policies, or actions targeted against discrete groups of individuals based on race, religion, ethnicity, sexual orientation, or national origin, whether or not the individual was actually a member of any of those groups, or because the individual assisted or allegedly assisted any of those groups, between January 1, 1929 and December 31, 1945, in the country of Nazi Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, areas occupied by those European countries allied with Nazi Germany, or any other neutral European country or area in Europe under the influence or threat of invasion by Nazi Germany or by any European country allied with or occupied by Nazi Germany.

(iii) "Nazi Germany" means:

1. for the period from 1929 to 1933, the Republic of Germany, commonly referred to as the Weimar Republic; and

2. for the period from 1933 through 1945, Deutsche Reich.

(2) The inheritance tax does not apply to the receipt of property that is:

(i) tangible or intangible property or compensation for tangible or intangible property that was seized, misappropriated, or lost as a result of the actions or policies of Nazi Germany toward a Holocaust victim; or

(ii) amounts received by a decedent as reparations or restitution for the loss of liberty or damage to the health of the decedent because the decedent was:

1. a Holocaust victim; or

2. a spouse or descendant of a Holocaust victim.

(3) The exclusion under paragraph (2) of this subsection includes interest on the proceeds receivable as insurance under policies issued by European insurance companies prior to and during World War II to a Holocaust victim.

(4) The exclusion under paragraph (2) of this subsection does not include:

(i) assets acquired with the assets described in paragraph (2) of this subsection; or

(ii) assets acquired with the proceeds from the sale of the assets described in paragraph (2) of this subsection.

(5) The subtraction under paragraph (2)(i) of this subsection shall only apply if the decedent:

(i) was the first recipient of the assets described in paragraph (2)(i) of this subsection after their recovery; and

(ii) was:

1. a Holocaust victim; or

2. a spouse or descendant of a Holocaust victim.

Addition to Tax General §7-203 as of July 1, 2009

(l) (1) (i) In this subsection the following words have the meanings indicated.

(ii) "domestic partner" means an individual with whom another individual has established a domestic partnership.

(iii) "domestic partnership" means a relationship between two individuals that is a domestic partnership within the meaning of §6-101 of the Health – General article.

(2) If the domestic partner of a decedent provides evidence of the domestic partnership as described in §6-101(b) of the Health – General article, the inheritance tax does not apply to the receipt of an interest in a joint primary residence that:

(i) at the time of death was held in joint tenancy by the decedent and the domestic partner; and

(ii) passes from the decedent to or for the use of the domestic partner.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect July 1, 2009 and shall be applicable to all decedents dying on or after July 1, 2009.

Requirements of Domestic Partnership from Health – General §6-101

(A) *DEFINITIONS.* - IN THIS TITLE, “DOMESTIC PARTNERSHIP” MEANS A RELATIONSHIP BETWEEN TWO INDIVIDUALS WHO:

(1) ARE AT LEAST 18 YEARS OLD;

(2) ARE NOT RELATED TO EACH OTHER BY BLOOD OR MARRIAGE WITHIN FOUR DEGREES OF CONSANGUINITY UNDER CIVIL LAW RULE;

(3) ARE NOT MARRIED OR IN A CIVIL UNION OR DOMESTIC PARTNERSHIP WITH ANOTHER INDIVIDUAL; AND

(4) AGREE TO BE IN A RELATIONSHIP OF MUTUAL INTERDEPENDENCE IN WHICH EACH INDIVIDUAL CONTRIBUTES TO THE MAINTENANCE AND SUPPORT OF THE OTHER INDIVIDUAL AND THE RELATIONSHIP, EVEN IF BOTH INDIVIDUALS ARE NOT REQUIRED TO CONTRIBUTE EQUALLY TO THE RELATIONSHIP.

(B) *REQUIREMENTS.* - AN INDIVIDUAL WHO ASSERTS A DOMESTIC PARTNERSHIP UNDER

SUBSECTION (A) OF THIS SECTION MAY BE REQUIRED TO PROVIDE PROOF:

(1) AN AFFIDAVIT SIGNED UNDER PENALTY OF PERJURY BY TWO INDIVIDUALS STATING THAT THEY HAVE ESTABLISHED A DOMESTIC PARTNERSHIP; AND

(2) PROOF OF ANY TWO OF THE FOLLOWING DOCUMENTS:

(i) JOINT LIABILITY OF THE INDIVIDUALS FOR A MORTGAGE, LEASE, OR LOAN;

(ii) THE DESIGNATION OF ONE OF THE INDIVIDUALS AS THE PRIMARY BENEFICIARY UNDER A LIFE INSURANCE POLICY ON THE LIFE OF THE OTHER INDIVIDUAL OR UNDER A RETIREMENT PLAN OF THE OTHER INDIVIDUAL;

(iii) THE DESIGNATION OF ONE OF THE INDIVIDUALS AS THE PRIMARY BENEFICIARY OF THE WILL OF THE OTHER INDIVIDUAL;

(iv) A DURABLE POWER OF ATTORNEY FOR HEALTH CARE OR FINANCIAL MANAGEMENT GRANTED BY ONE OF THE INDIVIDUALS TO THE OTHER INDIVIDUAL;

(v) JOINT OWNERSHIP OR LEASE BY THE INDIVIDUALS OF A MOTOR VEHICLE;

(vi) A JOINT CHECKING ACCOUNT, JOINT INVESTMENTS, OR A JOINT CREDIT ACCOUNT;

(vii) A JOINT RENTER’S OR HOMEOWNER’S INSURANCE POLICY;

(viii) COVERAGE ON A HEALTH INSURANCE POLICY;

(ix) JOINT RESPONSIBILITY FOR CHILD CARE, SUCH AS GUARDIANSHIP OR SCHOOL DOCUMENTS; OR

(x) A RELATIONSHIP OR COHABITATION CONTRACT;

Tax Rates:**Higher Rates:**

1%	began 3/16/35 to 6/30/1999 (Direct)	1.010101%
2 ½ %	1874-1908 (Collateral)	
5%	1908-1935 (Collateral)	5.2631579%
7 ½ %	1935- 6/1/75 (Collateral)	
10%	6/1/75 to current (Collateral)	11.111111%
.9%	7/1/1999-6/30/2000 (Direct)	.9081736%
8%	7/1/1999 to 6/30/2000 (Siblings only)	8.6956522%

Unless interim distributions are reduced by the appropriate amount of tax at the time of distribution, tax is charged at a higher rate. If there is a sufficient tax clause in the will, specific bequest should be paid without reduction by the tax, and tax is charged at the higher rate. Tax charged at the higher rate may be claimed as an expense in the account. If tax is not taken out of what is generating the tax then the tax is a distribution and subject to tax. This is accomplished by using the formula for the higher rate on the distribution listed.

If a small estate is converted to a regular estate the fee paid with the small estate is listed as an expense of the regular estate and not deducted from the probate fee due in the regular estate.

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Eleven Section I

Reference	Description
ET §5-207	Caveat proceeding
Rule 6-431	Caveat
Rule 6-432	Order to answer; register's notice and service
Rule 6-433	Subsequent procedure on petition to caveat

References: **ET – Annotated Code of Maryland
Estates and Trusts Article**
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1

Register's Policies and Procedures

A verified petition to caveat may be filed by an heir of the decedent or a legatee in any instrument purporting to be a will or codicil. The petition may challenge the validity of any instrument purporting to be the decedent's will or codicil, **whether or not offered for or admitted to probate.** Generally, a petition to caveat shall be filed within six months after the first appointment of a personal representative under a will, even if there has been a subsequent judicial probate or appointment of a personal representative under that will. There are exceptions to the filing date. See Rule 6-431 (b) 1 & (b) 2.

Required to initiate a caveat proceeding:

Petition to Caveat (see rule 6-431 (c) for content requirements)

List of Interested Persons (who could be affected by the proceeding) ([Form 1104](#))

Notice of Caveat ([Form 1131](#))

Public Notice to Caveat ([Form 1132](#))

Filing Fee - \$10.00 and newspaper publication cost

The petitioner shall file a sufficient number of copies of the petition to caveat and Notice of Caveat for the register to comply with rule 6-432.

Within five days after the filing of the petition to caveat the Register shall:

- **Issue an Order to Answer requiring a response within 20 days after service**
- **Serve the Order together with a copy of the petition on the personal representative by certified mail**
- **Serve on each interested person a copy of the Notice of Caveat by certified mail, and if no personal representative appointed under the will or codicil is currently serving, furnish with the notice a copy of the petition to caveat**
- **Publish the Public Notice of Caveat once a week for two successive weeks**

The filing of a Petition to Caveat terminates the appointment of a Personal Representative (if one has been appointed), and converts the Personal Representative to a Special Administrator.

The Orphans' Court does not have jurisdiction to conduct a jury trial. If a Caveator or Caveatee wishes to obtain a jury trial in a caveat proceeding, such party should file in the Orphans' Court a Petition for Transmission of Issues to the Circuit Court. A deposit of \$40.00 payable to the Register of Wills and a separate check for \$105.00 payable to the Circuit Court for filing fees is required to be paid with the filing of the petition.

All forms referenced are located in the appendix

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Eleven Section II

Reference	Description
ET §3-203	Right to elective share
ET §3-204	Right to election personal to surviving spouse
ET §3-205	Waiver of rights in decedent's estate
ET §3-206	Time limitation for making election; withdrawal
ET §3-207	Form of election
ET §3-208	Effect of election upon will
Rule 6-411	Election to take statutory share

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

Instead of property left by a will, the surviving spouse may elect to take a one-third share of the net estate if there is also a surviving issue, or a one-half share of the net estate if there is no issue. The surviving spouse who makes this election may not take more than a one-half share of the net estate. ***The net estate and the value have been defined in***

E&T § 3-203 (effective for decedent's dying on or after October 1, 2003.) An election to take statutory share ***shall be filed within the later of: nine (9) months after the date of the decedent's death or six (6) months after the first appointment of a personal representative under a will (effective for decedent's dying on or after October 1, 2003),*** unless extended pursuant to rule 6-411(c). The surviving spouse may file with the register a withdrawal of the election at any time before the expiration of the time or any extension thereof granted by the court, for filing an election. Upon the filing of an election, the spouse may receive **no benefits under the will**. Contribution to pay the elective share shall be prorated among all legatees.

Election to Take Statutory Share

[**\(Form 1126\)**](#)

Notice of Extension of Time to Elect Statutory Share

[**\(Form 1127\)**](#)

All forms referenced are located in the appendix

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Eleven Section III

Rule 6-131	Presence of the personal representative
Rule 6-132	Appearance of attorneys
Rule 6-133	Attorney may act for person
Rule 6-134	Signing of petitions and other papers
Rule 6-135	Requirements of signing attorney
Rule 6-141	Bad Faith – Unjustified proceeding

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

An appearance of an attorney may be entered by signing and filing a petition for probate or other paper, by filing an entry of appearance or by requesting the entry of an appearance in open court. An attorney may withdraw their appearance when the **client has another attorney of record** by filing a notice of withdrawal. If the **client has no other attorney of record**, an attorney may withdraw an appearance by filing a motion to withdraw pursuant to Rules 2-132 and 6-132.

A person's attorney may perform any act required by Maryland Rules except for the signing of documents required by law to be filed by a personal representative with the register or the court. When any notice is to be given by or to a person, the notice may be given by or to the attorney for that person.

Every petition or other paper of a person represented by an attorney shall be signed by at least one attorney who has been admitted to practice law in this State and who complies with Rule 6-135. The signature of an attorney on a paper constitutes a certification that the attorney has read the paper; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that is not interposed for improper purpose or delay.

In addition to having been admitted to practice law in this State, an attorney signing a petition or paper in compliance with Rule 6-134 shall comply with one of the following two requirements. The attorney shall:

1. maintain an office for the practice of law in the United States, or
2. be a regular employee for an agency of government or of a business or other non-governmental organization or association and be authorized to sign pleadings on behalf of the employer.

If an attorney signing a petition or paper in compliance with Rule 6-134 does not maintain an office of the practice of law in this State, the first paper signed by the attorney and filed in the action shall be accompanied by the attorney's signed certification of admission to practice law in this State.

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Eleven Section IV

Reference	Description
ET §9-201	Definitions
ET §9-202	Disclaimer in general
ET §9-203	Effects of disclaimer
ET §9-204	Joint Holders
ET §9-205	Disclaimer by Trustee
ET §9-206	Holder disclaiming power of appointment or other non-fiduciary power
ET §9-207	Disclaimer by appointee of power of appointment
ET §9-208	Fiduciaries- Time of taking effect; effectiveness as to other fiduciaries
ET §9-209	Delivery and effectiveness
ET §9-210	When barred
ET §9-211	Effect of federal laws and regulations
ET §9-212	Filing, recording, registering
ET §9-213	Unexercised disclaimers under former provisions
ET §9-214	Severability
ET §9-215	Rights under other statues not affected
ET §9-216	Short title
Rule 6-412	Disclaimer

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

IN GENERAL

Content of a Disclaimer: Maryland Rule 6-412(a)

Requirements of disclaimer: ET §9-203

The disclaimer shall be in writing and shall (1) describe the property or interest disclaimed, (2) declare the disclaimer and its extent, (3) be signed by the disclaimant, and (4) be acknowledged if an interest in real property is being disclaimed – for form of acknowledgment see RP §4-204

Disclaimer is irrevocable:

ET§9-204(g)

Disclaimer relates back to date of death or effective date of nontestamentary instrument or contract:

ET §9-204(e)

A disclaimer relates back for all purposes to the date of death of the deceased owner or the deceased donee of the power, or to the effective date of the nontestamentary instrument or contract.

Disclaimer is binding upon disclaimant and all persons claiming through or under him:

ET §9-204(f)

Creditors of the disclaimant have no interest in the property or interest disclaimed:

ET §9-204(f)

Disclaimer of a power extinguishes the power as to the disclaimant:

ET §9-204(d)

Interest in property:

ET §9-201(d)

For purposes of this subtitle, a power with respect to property, or any possible future right to take as an appointee of an unexercised power of appointment, or any right to take as a beneficiary of a discretionary power to distribute income or principal shall be treated as an interest in property.

Interest in property existing on July 1, 1978:

ET §9-207

An interest in property that exists on July 1, 1978 as to which the time for filing a disclaimer under this subtitle has not expired may be disclaimed within the time provided in ET §9-202 or before April 1, 1979 whichever period is greater.

Prior notice to interested persons required under certain circumstances:

ET§9-201(c)

Thirty days after delivering or mailing a written notice to all interested persons, the attorney-in- fact of a person, or the personal representative of a deceased person, or the guardian of the property of a minor or disabled person, may disclaim in whole or in part the right of succession or transfer to that person of any property or interest in any property. The Circuit Court, without appointing a guardian, may authorize or direct a disclaimer on behalf of a minor or disabled person pursuant to ET§13-204. In the case of a deceased person, interested persons are those defined in ET §1-101. In all other cases, interested persons are those defined in ET §13-101.

Property that would devolve to a tenant by the entireties – spouse must consent:

ET §9-201(b)

A tenant by the entireties may disclaim as a separate interest any property or interest in property which otherwise would devolve to the disclaimant by right of survivorship only if the disclaimant's spouse affixes his or her written consent to the disclaimer.

Disclaimer of an entire interest - limits:

ET §9-201(b)

A joint tenant or tenant by the entireties may disclaim the entire interest in any property that is the subject of a joint tenancy or tenancy by the entireties if the disclaimant did not join in creating the joint tenancy or tenancy by the entireties and if the disclaimant has not accepted a benefit under the joint tenancy or tenancy by the entireties.

Persons who may disclaim:

ET §9-201(a)

A person who is an heir, next of kin, devisee, legatee, person succeeding to a disclaimed interest, beneficiary under a testamentary instrument, or appointee under a power of appointment exercised by a testamentary instrument may disclaim in whole or in part the right of succession to any property or interest in any property, including a future interest, by filing a disclaimer under this subtitle.

When right to disclaim barred:

ET 9-205(a)

The right to disclaim property or an interest in it is barred by (1) an assignment, conveyance, voluntary encumbrance, pledge, or transfer of the property or interest, or a contract for any of those, (2) a written waiver of the right to disclaim, (3) an acceptance of the property or interest or a benefit thereunder, or (4) a sale of the property or interest under judicial sale made before the disclaimer is effected.

Effect of spendthrift provision or similar restriction:

ET §9-205(b)

The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

Effect of disclaimer where there is no will or other instrument:

The laws of intestacy create an express condition of survivorship and the disclaimed property passes to the intestate decedent's heirs at law. Attorney General Letter of Advice dated February 4, 1999.

RULES OF DEVOLUTION:

ET §9-204

1. Disclaimers of Property passing pursuant to a testamentary instrument or by laws of intestacy:

ET§9-202(a)

To be filed with the Register:

The disclaimer shall be filed with the register of the county in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced.

Time limits for filing disclaimer: ET §9-202(a)

Time for filing with Register : Maryland Rule 6-412(a)

If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer shall be filed:

- (a) if of a present interest, or an entire interest in a joint tenancy or tenancy by the entireties, not later than nine months after the death of the deceased owner or deceased donee of a power of appointment; or
- (b) if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and that his right to possess or enjoy his interest is indefeasibly vested

Notice Requirements:

ET §9-202(a) and Maryland Rule 6-412(c)

In addition to filing the disclaimer with the register, a copy of the disclaimer shall be delivered in person or mailed by registered or certified mail to any personal representative or other fiduciary of the deceased owner or deceased donee of the power of appointment, and to the trustee or other person who has legal title to the property or interest claimed

For real estate:

Maryland Rule 6-412(c), ET §9-202(c)

The disclaimant shall cause an executed copy of the disclaimer to be recorded among the land records of the county in which any real property or interest in real property that is disclaimed is located.

Effect of Disclaimer: ET §9-204

- (a) When devolution is conditioned on survival of the disclaimant per the will, the disclaimant is considered to have predeceased the decedent and the disclaimed property passes under the will of the decedent.
- (b) When there is no condition of survival of the disclaimant in the will the disclaimant is considered to have predeceased the decedent, but to have died owning the disclaimed property, and the disclaimed property passes to the disclaimant's heirs at law.
- (c) **where there is no will or other instrument, the laws of intestacy create an express condition of survivorship and the disclaimed property passes to the intestate decedent's heirs at law. Attorney General Letter of Advice dated February 4, 1999.**

2. Disclaimers of property passing pursuant to a non testamentary instrument or contract:

ET §9-201(b)

A person who is a grantee, donee, person succeeding to a disclaimed interest, beneficiary under a nontestamentary instrument or contract, or appointee under a power of appointment exercised by a nontestamentary instrument, may disclaim in whole or in part the right of transfer to him of any property or interest in any property, including a future interest, by delivering or filing a disclaimer.

Person with whom disclaimer must be filed:

ET §9-202(b)

The disclaimer or a copy of it shall be delivered in person or mailed by registered or certified mail to the trustee or other person who has legal title to the property or interest disclaimed, or to the transferor of the property or interest disclaimed or his legal representative.

For real estate: The disclaimant shall cause an executed copy of the disclaimer to be recorded among the land records of the county in which any real property or interest in real property that is disclaimed is located. Maryland Rule 6-412(c), ET §9-202(c).

Time limits for making disclaimer:

ET §9-202(b)

If the property or interest in property has devolved to the disclaimant under a non-testamentary instrument or contract, the disclaimer shall be delivered or filed, if of a present interest, or an entire interest in a joint tenancy or tenancy by the entireties, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and that his right to possess or enjoy his interest is indefeasibly vested.

The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to himself or another the entire legal and equitable ownership of the interest, i.e., the date of death. ET§9-202(b)

Effect of Disclaimer:

ET §9-204(b)(1)

If property or an interest in it devolved to a disclaimant under a non-testamentary instrument or contract, or under a power of appointment exercised by a nontestamentary instrument, unless the instrument or contract has provided otherwise.”

- (a) When devolution is expressly conditioned on the disclaimant’s survival to the effective date of the instrument or contract, i.e., date of death of the decedent, the property or interest disclaimed devolves as if the disclaimant had died immediately prior to the effective date of the contract and the disclaimed interest passes pursuant to the terms of the instrument or contract.
- (b) When there is no condition of survival to the effective date of the instrument or contract, i.e., date of death of the decedent, the property or interest disclaimed devolves directly to the disclaimant’s heirs at law.
- (c) A future interest that takes effect in possession or enjoyment at or after the termination of the estate or interest disclaimed takes effect as if the disclaimant had died immediately before the effective date of the instrument or contract, i.e., date of death of the decedent.

Property that would devolve to the disclaimant by right of survivorship:

A joint tenant or a tenant by the entireties may disclaim as a separate interest any property or interest in property which otherwise would devolve to the disclaimant by right of survivorship. ET §9-201(b)

To be filed with the Register:

The disclaimer shall be filed with the register of the county in which proceedings have been commenced for the administration of the estate of the deceased joint owner or, if they have not been commenced, in which they could be commenced. ET §9-202(a)

Time limits for filing disclaimer: ET §9-202(a)

Any disclaimer as a separate interest of an interest which otherwise would devolve by right of survivorship made by a joint tenant or tenant by the entireties shall be filed not later than nine months after the death of the deceased joint tenant or deceased tenant by the entireties which determines the disclaimant’s right to possess or enjoy that separate interest.

Notice Requirements: ET §9-202(a) and Maryland Rule 6-412(c)

A copy of the disclaimer shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the deceased owner . . . or other person who has legal title to the property or interest disclaimed.

For real estate: The disclaimant shall cause an executed copy of the disclaimer to be recorded among the land records of the county in which any real property or interest in real property that is disclaimed is located. Maryland Rule 6-412(c), ET §9-202(c)

Effect of the disclaimer:

ET §9-204(c)

If the property or interest disclaimed is or, immediately prior to the death of a joint tenant or tenant by the entireties, was subject to a joint tenancy or tenancy by the entireties, the property or interest disclaimed devolves as if the disclaimant had predeceased the other joint tenant or tenant by the entireties.

If the property or interest disclaimed is subject to a joint tenancy involving multiple surviving joint tenants, and if all surviving joint tenants disclaim, the property or interest disclaimed devolves as if all the disclaimants had predeceased the deceased joint tenant.

3. Disclaimers in estates administered under modified administration:
Attorney General Letter of Advice dated January 14, 2000

“ . . . if the ultimate takers under a disclaimer are not the personal representative, surviving spouse or children of the decedent, the estate administration cannot continue under modified administration.”

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Eleven Section V

Reference	Description
ET §1-102	Verification
Rule 6-108	Register of wills – acceptance of papers

References: **ET – Annotated Code of Maryland
Estates and Trusts Article**
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1

Register's Policies and Procedures

A register of wills shall not refuse to accept for filing any paper on the ground that it is not in the form mandated by Maryland Rules Title 6 except for a petition or paper requiring service unless it is accompanied by (1) a signed certificate showing the date and manner of service as prescribed in Rule 6-125 or (2) a signed statement that, for reasons set forth in the statement there is no person entitled to service.

A photocopy or facsimile copy of a pleading or paper except a will or codicil, once filed with the court, shall be treated as an original for court purposes. **However, no filing of a pleading or paper may be made by transmitting it directly to the court or register by electronic transmission this includes facsimile and/or email.**

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Eleven Section VI

Reference	Description
ET §5-103	Venue
Rule 6-111	Venue

References: **ET – Annotated Code of Maryland
Estates and Trusts Article**
**Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

The venue for administrative or judicial probate is in the county in which the decedent had his domicile at the time of his death, or, if the decedent was not domiciled in Maryland, the county in which the petitioner believes the largest part in value of the property of the decedent in Maryland was located at the time of his death.

The register will not determine venue for any estate, the petitioner must determine the venue and file appropriately. The Maryland Court of Appeals had indicated that the two most important elements in determining domicile are where a person actually lives and votes (Harrison v. Harrison 117Md. 607, 84A. 57 1912). If the place of residence and place of voting are not the same additional factors should be considered (Bainun v. Kalen, 272, Md. 490, 325 A.2d 392 (1974) ¹

- payment of taxes and statements on tax returns
- ownership of property
- the address at which one receives mail
- statements as to residency contained in contracts
- statements on licenses or governmental documents
- where furniture or personal belongings are kept
- where decedent's bank accounts are located
- membership in professional, fraternal, religious or social organizations
- regular physician and dentist are located
- maintains charge accounts

¹ Attorney General letter of advice dated December 16, 1987

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Eleven Section VII

Reference	Description
ET §8-101	Claim not paid in normal course of administration
ET §8-102	Effect of statute of limitations
ET §8-103	Limitation on presentation of claim
ET §8-104	Manner of presentation of claim; form
ET §8-105	Order of payment
ET §8-108	Payment of claim
ET §8-109	Liability of personal representative
ET §8-110	Claim not yet due
ET §8-111	Secured claim
ET §8-112	Contingent claim
ET §8-113	Counterclaim
ET §8-114	Execution and levy prohibited
ET §8-115	Exemption of proceeds of life insurance and other benefits
ET §10-102	Liability of heir or legatee to creditor
Rule 6-413	Claim against estate – procedure
Rule 6-441	Meeting of creditors

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

A claimant may make a claim against an estate, within the time allowed for presenting claims, either by (1) serving it on the personal representative; (2) by filing it with the register and serving a copy on the personal representative; or (3) by filing suit. If the claim is filed prior to the appointment of the personal representative, the claimant may file the claim with the register in the county in which the decedent was domiciled or in any county in which the decedent resided.

A claim must be presented within the earlier of the following dates:

- (1) 6 months after the date of the decedent's death; or
- (2) 2 months after the personal representative mails or otherwise delivers to the creditor a copy of a notice in the form required by ET §7-103 or other written notice, notifying the creditor that his claim will be barred unless he presents the claim within 2 months from the mailing or other delivery of the notice.
- (3) A claim filed by the Department of Health and Mental Hygiene against the estate of a decedent must be filed within the earlier of the following dates:
 - (a) 6 months after **publication of notice** of the first appointment of a personal representative; or
 - (b) 2 months after the personal representative mails or otherwise delivers to the Department's Division of Medical Assistance Recoveries a copy of a notice in the form required under ET §7-103.

Except as otherwise expressly provided by statute, with respect to claims of the United States and the State, claims not filed in accordance with ET§8-103, shall be barred.

Unless a contrary intent is indicated in the will, a claim which was barred by a statute of limitations at the time of the death of the decedent may not be allowed or paid. ET §8-102 (a)

Presentation of Claims

Claims may be presented in the following manner:

- (1) The claimant may deliver or mail to the personal representative a verified written statement of the claim indicating the following:
 - (a) The basis for the claim
 - (b) The name and address of the claimant.
 - (c) The amount claimed.
 - (d) Additional requirement such as described in §8-104 may also be required.
Failure to provide requested information may be a basis for disallowance of a claim in the discretion of the court.
- (2) Filing with the register- the claimant may file with the register, a verified written statement as described in paragraph (1)(a)(b)(c) and (d) above.

Claim against Decedent's Estate

(Form 1128)

Filing Fee for Claims

\$3.00

The register may refuse for filing a claim that does not have the correct filing fee.¹

- (3) When a cause survives death, the claimant does not have to file a claim as described in paragraph 1 & 2 above, but can commence an action against the estate or person to whom property has been distributed, within the time limit for filing claims.

Payment of Claims-Upon the expiration of 6 months from the date of the decedent's death, the personal representative shall pay the claims allowed against the estate in the order of priority prescribed in ET §8-105.

Insufficient Assets -If the assets of the estate are insufficient to pay all of the claims in full, the personal representative shall make payment according to ET §8-105 Order of Payment.

Claims by the IRS shall take priority over all other claims. See United States v. Bielaski, 756 A.2d 583 July 26, 2000 CA No. 149.

Old age assistance claims are payable ahead of all other claims (except as stated above). A preference shall not be given in the payment of one claim over another claim of the same class.

A claim due and payable is not entitled to a preference over claims not yet due.

¹ Memorandum from the Attorney General dated September 9, 1997

Disallowance of Claim -If the personal representative intends to disallow a claim that has been presented within the appropriate time and in the form prescribed in ET §8-104 (b) or (c), in whole or in part, he shall file with the register and mail to the claimant a notice stating:

- (1) That the claim is disallowed in whole or in a stated amount, the claimant is forever barred unless he files a Petition for Allowance of Claim, in the Court within 60 days after mailing of notice by the personal representative; or
- (2) That the personal representative will petition the court to determine whether the claim should be allowed. See ET §8-107 (2)(b)(c)(d).

Notice of Disallowance

[**\(Form 1129\)**](#)

No Action Taken- If no action has been taken by the personal representative disallowing the claim in whole or in part, the claimant may petition the court for determination of the validity of the claim.

Hearing- Upon the filing of a petition by the personal representative or a claimant, the court shall hold a hearing on the petition after notice to the personal representative, the claimant, and such other persons as the court may direct.

Liability Of Heir Or Legatee To Creditor

After an estate has been closed, a claim not barred may be prosecuted against one or more of the persons to whom property has been distributed. ET §10-102

All forms referenced are located in the appendix

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Eleven Section VIII

Reference	Description
ET §7-305 (b)	When to render accounts (extensions)
Rule 6-106	Computation of time referred to Rule 1-203
Rule 6-107	Extension of time
Rule 6-124	Show cause order
Rule 6-125	Service
Rule 6-456	Modified Administration – Extension of time to file a final report and make distribution

References: **ET – Annotated Code of Maryland**
 Estates and Trusts Article
Rule – Annotated Code of Maryland
 Maryland Rules – Volume 1

Register's Policies and Procedures

Requirement:

List of Interested Persons

unless a complete and accurate list was previously filed – **does not apply to small or judicial estates as the list is required at the time of filing the petition.**

Sufficient Copies of Notice of

Appointment - to be mailed to all interested persons in a **regular estate only** that did not waive notice

Information Report – if a personal representative is appointed

Application to Fix Tax on Non-probate Assets –

Inventory Summary and Supporting Schedules – regular estate only

First Account

Subsequent Account

Final Report

Due Dates:

Within 20 days after appointment of a personal representative

Within 20 days after appointment of a personal representative

Within three months of appointment of a personal representative

Within ninety days after date of death

Within three months of appointment of a personal representative

Within nine months of appointment of a personal representative

Intervals of six months from the approval of the prior account or nine months after the prior account is filed

Within ten months of appointment of a personal representative

For good cause shown, a written request for an extension of time may be granted by the Register of Wills or the Orphans' Court provided the written request is received prior to the filing deadline. **The Register of Wills will not grant extensions for more than 30 days beyond the filing deadline.** A verified petition for extension of time and proposed order for the Court's consideration must be filed if an extension exceeding 30 days is required. Interested persons should be given notice of any petition requesting an extension. Unless a written request for extension of time is granted in advance of the filing deadline, failure to timely file any required document will result in an order to show cause why the personal representative should not be removed. A copy of the order to show cause will be mailed to all interested persons. A petition for extension filed after the issuance of a show cause order will be accepted for filing but not processed.

DELINQUENT NOTICE

Upon the detection of an overdue filing , a delinquent notice is generated and mailed to the personal representative and/or the attorney of record. The notice informs the personal representative that the required document must be submitted within 15 days. Failure to comply with the notice will result in the court issuing a show cause order.

SHOW CAUSE ORDER

A show cause order directs a person to show cause on or before a specified date why the court should not take action described in the order. If a hearing is scheduled when the order is signed, the order shall set forth the date and time. The order shall also specify who is to be served and the method of service. A copy of any related petition or other paper shall be served with a copy of the order.

Generally, in order to rescind a show cause order for statutory required filings the document required must be filed 5 business days prior to the hearing date to assure proper notice to the interested persons of the cancellation of the hearing.

SERVICE

Except where these rules specifically require that service shall be made by certified mail, service may be made by personal delivery or by first class mail. Service by certified mail is complete upon delivery. Service by first class mail is complete upon mailing. If a person is represented by an attorney of record, service shall be made on the attorney pursuant to Rule 1-321. Service need not be made on any person who has filed a waiver of notice pursuant to Rule 6-126.

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Eleven Section IX

Reference	Description
Rule 6-463	Appeals
Rule 8-201	Method of securing review – Court of Special Appeals
Rule 8-202	Notice of appeal – Times for filing
Rule 8-205	Information reports
Rule 8-206	Prehearing and scheduling procedure
CJP §12-501	Appeal to Court of Special Appeals
CJP §12-502	Appeal to Circuit Court except in Harford and Montgomery County
CJP §12-701	Stays

References: **ET – Annotated Code of Maryland
Estates and Trusts Article
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1**

Register's Policies and Procedures

An appeal from a judgment of the court may be taken to the Court of Special Appeals of Maryland. The notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken. An appeal from an Orphans' Court stays all proceedings in the Orphans' Court concerning the issue appealed. ***(Effective for an appeal filed on or after October 1, 2003.)*** An appeal from a final order removing a personal representative does not stay an order appointing a successor personal representative or special administrator. If a successor personal representative appointment is made, upon the filing of an appeal, he shall have the powers of a special administrator. Upon receipt of the order to transfer, a filing fee deposit of \$40.00 payable to the Register of Wills is required. The file will be prepared and any additional costs will be billed. A separate check in the amount of \$50.00 is also required payable to the Court of Special Appeals to be forwarded with the file. If the appellant requests a transcript of the hearing to be forwarded with the case file, the copy must be ordered from the technical services division of the Circuit Court and delivered to the Register of Wills by the appellant.

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Eleven Section X

Reference	Description
Rule 6-122	Petitions

References: **ET – Annotated Code of Maryland
 Estates and Trusts Article**
Rule – Annotated Code of Maryland
Maryland Rules – Volume 1
CJP – Annotated Code of Maryland
Courts and Judicial Proceedings

Register's Policies and Procedures

Limited Order to Locate Assets

A verified petition pursuant to Rule 6-122(a) may be filed requesting the Orphans' Court to issue a limited order to search for assets titled in the sole name of a decedent.

Filing requirements for issuance of Limited Order

Petition for Limited Order

[\(Form 1147\)](#)

Schedule C

[\(Form 1148\)](#)

Limited Order to Locate Assets

[\(Form 1150\)](#)

(the limited order is prepared by the Register of Wills Office)

Copy of death certificate or proof of death (funeral bill)

The issuance of this order is intended for the use of the person with priority to serve as personal representative.

The limited order to locate assets is not necessary if a determination can be made that the estate will be opened as a regular estate.

Limited Order to Locate Will

A verified petition pursuant to Rule 6-122(a) may be filed requesting the Orphans' Court to issue a limited order to a financial institution to enter the safe deposit box in the presence of the Register of Wills or authorized deputy for the sole purpose of locating the decedent's will. If the will is located it shall be delivered to the Register of Wills Office.

Petition for Limited Order

[\(Form 1147\)](#)

Schedule C

[\(Form 1148\)](#)

Limited Order to Locate Will

[\(Form 1149\)](#)

(the limited order is prepared by the Register of Wills Office)

Copy of death certificate or proof of death (funeral bill)

Please note policies established are subject to change and may not be applicable in every situation.

Chapter Eleven Section XI

Reference	Description
ET §1-301	All property of decedent; devolution at death
ET §2-102	Jurisdiction of court

References: **ET – Annotated Code of Maryland
 Estates and Trusts Article
Rule – Annotated Code of Maryland
 Maryland Rules – Volume 1**

Register's Policies and Procedures

The court may conduct judicial probate, direct the conduct of a personal representative, and pass orders which may be required in the court of the administration of an estate of a decedent. It may summon witnesses. The court may not, under pretext of incidental power or constructive authority, exercise any jurisdiction not expressly conferred.

The court may determine questions of title to personal property not exceeding \$20,000 (**\$50,000 effective October 1, 2009**) in value for the purpose of determining what property is includable in an estate.

An orphans' court has full power to secure the rights of a minor whose estate is being administered by a guardian under its jurisdiction. The orphans' court has jurisdiction to appoint a guardian of the person of a minor only in those instances when neither parent is serving as guardian and no testamentary appointment has been made.¹

If the majority of individuals under the Health General Code §5-509 (c) cannot agree on the arrangements, any individual specified in §5-509 (c) or the practitioner who has custody of the body, or both may file a petition in the circuit court for the county in which the decedent was domiciled at the time of death or the county in which the body is located requesting the court to decide the final disposition of the body. ²

Upon the filing of a petition, the court, by order, shall allow attorney's fees or personal representative's commissions as it considers appropriate, subject to any exceptions. MD Rule 6-416(a) (4) Court must take into account commissions paid or to be paid in determining reasonableness of counsel fees.³

The issuance of a Show Cause Order requires the appearance of the personal representative and attorney unless compliance is completed **prior to 5 business days of the scheduled hearing date.**

¹ 77 Opinions of the Attorney General 41(1992)

² Annotated Code of Maryland Health-General §5-510

³ Wright et al. v. Nuttle, Court of Appeals 267 MD. 698; 298 A.2d 389; 1973 md. LEXIS 1285

Please note policies established are subject to change and may not be applicable in every situation.

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Latest changes to the Probate Policies and Procedures Booklet

10/4/2011 Page 55 changed the word from **Before** to **After** "Effective for decedent dying on or after October 1, 2009."