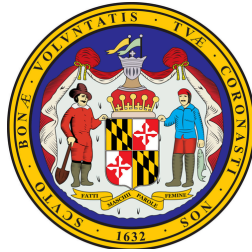


# ADMINISTERING ESTATES IN MARYLAND

## A Basic Instructional Guide



### **HON. PAUL J. DOLLAHITE** REGISTER OF WILLS FOR MONTGOMERY COUNTY

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## OVERVIEW

The purpose of this booklet is to inform you about administering estates – also known as “probate” – in Maryland. It describes this process and the necessary forms you would use if you are nominated to act as a personal representative of an estate. This booklet focuses on the most common forms used in probate. It does not cover topics such as state or federal income taxes, estate taxes, or how to dispose of real property located outside of the State of Maryland that may be subject to another state’s jurisdiction or laws. For any topic not covered in this booklet, please consult with an attorney or the office of the Register of Wills.

*Disclaimer: This brochure is provided for informational purposes only and does not constitute or is intended to constitute legal advice. Please consult an attorney for any legal advice.*

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# **Paul J. Dollahite Register of Wills Montgomery County, MD**

**Paul was unanimously selected by the Judges of the Circuit Court of Montgomery County, sitting as the Orphans' Court to replace the late Joseph M. Griffin as Register of Wills. Paul, a lifelong resident of Montgomery County, is the first attorney to serve as Register.**

**Paul has been with the Register of Wills Office for seventeen (17) years as Orphans' Court Administrator. In that capacity, he was involved with managing the Court's docket and was responsible for reviewing every case before the Orphans' Court and advising the Court on Estates and Trusts law.**

**Paul received his bachelor's degree in politics from the Catholic University of America where he was Captain of the Varsity Football team. He also received his Juris Doctor from Catholic University's Columbus School of Law. Before joining the Register's Office, he was a practicing attorney in Maryland for 13 years specializing in Estates and Trusts law and real estate settlements.**

**Paul and his wife of 29 years, Cindy, live in Kensington, Maryland and have two children.**

*It is my pleasure to serve our community and I welcome any suggestions or comments on how I may improve service. I recognize that people going through the probate process are usually experiencing some difficult times. I am here to assist you and to help make this process easier.*

Committed to quality service,  
Paul J. Dollahite

## **and REMEMBER:**

This office is restricted from giving legal advice. This book is intended to help assist in the preparation of administrative probate. If you have additional questions or a specific situation not addressed in this book, consult with your attorney or the Register of Wills before you proceed.

**Paul J. Dollahite  
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***Appointments are recommended to open estates in order to promote faster service***

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

Questions regarding the following should be directed to this department:

Wills, Administrative Probate, Judicial Probate, Bonds, Jurisdiction, Limited Orders, Letters of Administration, Updated/Additional Letters of Administration for a Small Estate, Change of Address and Amended List of Interested Persons

**Financial Analysis Division.....240-777-9640**

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 Responses

Information Report, Inventories, Appraisals, Inheritance Tax on Non-Probate Assets, Trusts, Joint Accounts, Payable on Death Accounts, IRAs, any Interest Less than Absolute

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

Questions regarding the following should be directed to this department:

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

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

Questions regarding the following should be directed to this department:

Whether an Estate has been Opened, Whether a Document has been Filed and/or Docketed, Delinquent Filings, Extensions of Time, Claims, Mandatory Filing Deadlines

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

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

## Section 1: Introduction

Estate administration – also known as “probate” – is the legal process of collecting the assets and property of someone who has passed away, determining their debts, and distributing those assets to those entitled to inherit. This booklet explains the probate process in Maryland, including the necessary forms you would need to file if you are selected to act as a personal representative of an estate. It discusses the most common forms used in administrative probate, all of which are available on the Register of Wills website and at the Office of the Register of Wills in the county where the decedent lived. More information about Maryland law and the forms used in estate administration can be found in the Estates & Trusts Article of the Annotated Code of Maryland and Title 6 of the Maryland Rules of Procedure, both of which are available online and at most public libraries.

For any topic not covered in this guide, please consult with the Register of Wills or an attorney.

## Section 2: Register of Wills

The Register of Wills is a public office established under the Constitution of Maryland. The Register of Wills is elected every four years in each county and Baltimore City. The Office of the Register of Wills is a full-time state agency staffed by experienced professionals who assist and advise the public in the preparation of forms for administrative probate. It is responsible for appointing personal representatives to administer decedents’ estates and for overseeing the proper and timely administration of these proceedings. It also performs the following duties: maintains the permanent record of all proceedings, tracks estates and refers delinquent matters to the Orphans’ Court, determines and collects inheritance taxes and probate fees, audits accounts of personal representatives and guardians, mails various notices and court orders to interested persons, and provides a service for safekeeping of wills for living persons.

The Register’s office is, however, prohibited from rendering legal advice. The Register of Wills website includes many useful resources, including all forms in .pdf format, numerous publications and sample guides, all public legal notices related to estate administration, links to related state and federal agencies, an estate search tool that allows you to research any estate opened in Maryland, and the ability to download copies of probate documents at the click of a button.

## Section 3: Orphans' Court

The Orphans’ Court is a public office established under the Constitution of Maryland. There is an Orphans’ Court in each of Maryland’s 24 jurisdictions, with purview over estates of deceased persons. This Court conducts judicial probate when an estate cannot be handled administratively and hears matters involving contested estates. In Harford, Howard, and Montgomery Counties, a Judge of the Circuit Court sit as the Orphans’ Court. In the remaining 21 of Maryland’s 24 jurisdictions, three judges are chosen in partisan elections for four-year terms and in 18 of those jurisdictions, judges are not required to be attorneys.

The Orphans’ Court approves administration accounts, and personal representative commissions and attorney’s fees for services rendered on behalf of an estate. As a court of special and limited jurisdiction, the Orphans’ Court does not have the authority to determine legal title to assets. These questions must be determined in the Circuit Court. Similarly, while matters involving the validity of wills may be heard by the Orphans’ Court, these questions are almost always transferred to the Circuit Court for adjudication.

## Section 4: Definitions

1. **Administration of an estate:** the management of a decedent's assets, which includes the collection of property, payment of expenses and debts, and distribution to the heirs or legatees.
2. **Administrative Probate:** a proceeding that is initiated with the Register of Wills by an interested person for the appointment of a personal representative and for the probate of a will, or the determination of intestacy of the decedent.
3. **Child (or children):** a child who is a marital child, an adopted child, a non-marital child to the extent provided by law, and a child conceived from the genetic material of a person after their death to the extent provided by law.
4. **Claimant:** a person (or entity) who files a claim against a decedent's estate.
5. **Debt of record:** a recorded debt, such as a mortgage on real property that is recorded in land records.
6. **Decedent:** a deceased person.
7. **Descendant:** one who is in the direct line of an ancestor, including a child, grandchild, great-grandchild, etc.
8. **Domicile:** the place where a person has physically been present with the intention to make the place a permanent home. (In other words, domicile is the place one would return to or intend to return to when away).
9. **Election against the will:** the right provided by statute to a spouse that allows them to receive a statutory share, even if it is more than the will provides.
10. **Encumbrance:** a lien or claim attached to property, such as a mortgage on real property.
11. **Estate:** the property of a decedent.
12. **Family allowance:** an allowance in addition to property passing under the will or by the laws of intestacy, for the personal use of the surviving spouse and for the use of each unmarried child under the age of 18 years.
13. **Fiduciary:** a person or institution that manages and administers money and other assets of another. A fiduciary includes trustee, receiver, custodian, guardian, executor, administrator, or personal representative.
14. **Gross estate:** the actual value of the estate assets without the deduction of liens, debts or expenses.
15. **Heir:** a family member who inherits from an estate when the decedent dies intestate.
16. **Information Report:** the document that reports all non-probate property (property that passes outside the probate estate). (Non-Probate property includes, but not limited to, jointly held assets, life estate or remainder interests in a trust or deed, trusts in which the decedent had an interest, payable on death (P.O.D.) assets, and pension and benefit plans including IRAs with named beneficiaries.)
17. **Inheritance tax:** a tax imposed on the privilege of receiving property from a decedent's estate.
18. **Interested person:** the person(s) serving (or petitioning to serve) as personal representative(s), legatees, heirs (even if the decedent died testate), trustee(s) of a testamentary trust, trustee(s) of a living trust, if applicable, and court-appointed guardian(s) for minors and disabled adults who are interested persons.

## Section 4: Definitions

19. **Intestate:** without a will.

20. **Issue:** every living lineal descendant except a lineal descendant of a living lineal descendant, including a marital child, an adopted child, a non-marital child to the extent provided by law, and a child conceived from the genetic material of a person after the death of the person to the extent provided by law. Issue does not include a stepchild or a foster child.

21. **Joint tenancy:** a type of ownership where personal or real property is held jointly by two or more persons in undivided (equal) shares with the right of survivorship. When a joint tenant dies, their share passes automatically by operation of law to the survivor(s).

22. **Judicial probate:** a probate proceeding conducted by the Orphans' Court when the situation prohibits administrative probate (ex. when the validity of the will is questioned, the will is damaged, or more than one qualified person applies for personal representative).

23. **Legatee:** a person named in a will to inherit.

24. **Letter of Administration:** a document issued by the Register of Wills that authorizes a personal representative to administer an estate.

25. **Limited Order:** an order permitting a search for assets in the decedent's name alone or for a will located in a safe deposit box.

26. **Lineal:** one who is in the direct line of the decedent, including ancestors and descendants.

27. **Modified Administration:** a streamlined version of administrative probate. In lieu of an inventory and an account, the personal representative is required to file a final report within 10 months from the date of appointment, which is reviewed and approved by the Register of Wills.

28. **Net estate:** property remaining after the deduction of liens, debts and expenses.

29. **Non-probate estate:** property that passes outside the probate estate, including, but not limited to jointly held assets, life estate or remainder interests in a trust or deed, trusts in which the decedent had an interest, payable on death (P.O.D.) assets, and pension and benefit plans including IRAs with named beneficiaries.

30. **Personal Representative:** the person appointed to administer the estate (often referred to as executor or administrator).

31. **Petition for Probate:** the document required to initiate a probate proceeding.

32. **Pour-over Will:** a will distributing money or property to an existing trust.

33. **Probate estate:** property owned solely by the decedent or as a tenant in common.

34. **Regular estate:** the estate procedure for a decedent who owned probate assets with a gross value in excess of \$50,000 (or \$100,000 if the sole heir or legatee is the surviving spouse).\*

35. **Residence:** living in a specific area without necessarily having the intent to indefinitely stay there. See "Domicile" for difference.

36. **Registered domestic partner:** an individual who has filed a declaration of domestic partnership with a Register of Wills, has been issued a certification of domestic partnership by the Register of Wills, and whose partnership had not been terminated prior to the death of the decedent. A surviving registered domestic partner has the same priority as a surviving spouse to serve as personal representative, to inherit in intestacy, and to receive a family allowance. A surviving registered domestic partner is also exempt from the inheritance tax.

## Section 4: Definitions

37. **Small estate:** the estate procedure for a decedent who owned probate assets with a gross value of \$50,000 or less (or \$100,000 or less if the sole heir or legatee is the surviving spouse).\*

38. **Special Administrator:** the administrator of an estate appointed by the court when it is necessary to protect and manage property prior to the appointment of a personal representative. (A special administrator has limited powers).

39. **Tenants by the entirety:** a type of ownership that is created only between two spouses where they hold title to an interest in property together with the right of survivorship.

40. **Tenants in common:** a type of ownership where two or more persons each hold an undivided interest in a piece of property with no right of survivorship. Upon the death of an owner, their interest passes to the heirs under the laws of intestacy or in accordance with the terms of the will.

41. **Testamentary Trust:** a trust that is created by a will and takes effect when the settlor (testator) dies.

42. **Testate:** dying with a will.

43. **Testator/Testatrix:** individual who makes a will.

44. **Trust, also living trust or inter vivos trust:** real and/or personal property held by one party (trustee) for the benefit of another (beneficiary). Trust assets are non-probate assets.

**\*Note:** For persons dying prior to October 1, 2012, a Regular Estate consists of assets with a gross value in excess of \$30,000 (or \$50,000 if the sole heir or legatee is the surviving spouse).

For persons dying prior to October 1, 2012, the Small Estate consists of assets with a value not exceeding \$30,000 (or \$50,000 or less if the sole heir or legatee is the surviving spouse).

## Section 5: Small Estates

If the probate assets in Maryland have a value of \$50,000 or less (or \$100,000 if the spouse is the sole legatee or heir) the estate may be opened as a small estate. To establish the value of an estate, include only assets held in the name of a decedent alone and/or an interest held as tenants in common. The value is the fair market value less any 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.

### Documents Required

As petitioner for appointment as personal representative, the process to open a small estate begins by filing the **Petition for Administration (Form 1103)** and **Schedule B (Form 1137)**. These forms include the following:

- (1) The domicile of the decedent;
- (2) Reason the petitioner has a right to be appointed the personal representative;
- (3) Whether the decedent died with or without a will (if the decedent had a will, the original will must be included with the Petition);
- (4) The eligibility of the petitioner to serve as personal representative;
- (5) A list of the decedent's probate property (both real and personal property owned solely by the decedent or as a tenant in common);
- (6) Any lien secured by the property, such as mortgage on home or lien on vehicle; and
- (7) A list of known creditors and the amounts claimed.

**NOTE:** Supporting documentation may be required showing the date of death value of each asset and any mortgage or lien on any property.

The original **Last Will and Testament** and Codicil(s), if any, must be filed with the Register of Wills.

The **List of Interested Persons (Form 1104)** must be filed with the petition to open the estate. This list must include the petitioner, all persons named in the will to inherit from the estate (legatees), and all heirs at law, even if they are not named in the will. When distribution is to be made to a trust, the trustee is an interested person.

A **Consent to Appointment of Personal Representative (Form 1118)** is required by all interested persons who have greater priority to serve as personal representative than the person petitioning. (**Form 1118** also includes language indicating whether there is consent to waiver of bond.)

The **Appointment of Resident Agent (Form 1106)** is required if the petitioner is not a resident of Maryland.

When the estate has a value of \$10,000 or more after allowable expenses, a **Bond of Personal Representative (Form 1115)** must be filed with the petition, unless bond is excused by the will or if waived by all interested persons by signing a **Waiver of Bond (Form 1117 or Form 1118)**. An insurance company must execute the bond form.

**Notice of Appointment, Notice to Creditors, Notice to Unknown Heirs (Form 1109)** must be filed with the petition if the value of the assets in the estate exceeds the allowable funeral expenses, family allowances and costs to the Register combined, or if the petitioner requests the probate of a will. The notice is published once by the Register of Wills in a newspaper of general circulation that is designated by the personal representative. This notice informs interested persons of their right to object to the appointment of the personal representative and the probate of the decedent's will, if applicable. It also informs creditors of their right to file a claim against the estate.

An interested person may sign the **Waiver of Notice (Form 1101)** to forego all notice requirements in the estate.

## Section 5: Small Estates

### Appointment of the Personal Representative

The Register of Wills may admit a will to probate and appoint a personal representative. The duties and powers of a personal representative commence upon issuance of **Letters of Administration**. In granting letters, the register observes an order of priority as established by Maryland law. Priority of appointment begins with person(s) named in the will to serve, surviving spouse, children, etc., to creditors or any other person. Maryland law has established restrictions on the right to letters of administration. The following is a partial list of some of the persons excluded:

- (1) Under the age of 18 years;
- (2) Mentally incompetent;
- (3) Convicted of a serious crime, unless the person shows good cause for the granting of letters;
- (4) Not a citizen of the United States unless the person is a permanent resident of the United States and is:
  - (a) The spouse of the decedent;
  - (b) An ancestor of the decedent;
  - (c) A descendant of the decedent; or
  - (d) A sibling of the decedent.

Upon appointment, the Register of Wills office will issue a schedule of mandatory filing deadlines. As the personal representative of a small estate you are required to make a reasonably diligent effort to ascertain the names and addresses of the decedent's creditors, and mail or deliver a notice to those creditors.

### Information Report (Form 1124)

Within three months after the appointment of a personal representative, the personal representative must file an Information Report. The assets reported on this form are assets that the decedent held a less than absolute or whole interest at date of death, or assets that had a previously designated beneficiary. Therefore, these assets do not follow the terms of the will or the laws of intestacy. Any such assets passing to any persons or entities other than those exempt from inheritance tax must be reported. The following are reportable on the Information Report:

- (1) Jointly held assets;
- (2) Transfer of any material part of the decedent's property in the nature of a final disposition or distribution, including any transfer that resulted in joint ownership of property within two years before death;
- (3) Any interest less than absolute in real or personal property over which the decedent retained dominion while alive;
- (4) Payable on death (P.O.D.) or transfer on death (T.O.D.) accounts;
- (5) Any interest in an annuity or other public or private employee pension or benefit plan;
- (6) Any interest in real or personal property for life or for a term of years;
- (7) Any other interest in real or personal property less than absolute, in trust or otherwise.
- (8) Real or leasehold property located outside of Maryland either in the decedent's name only or as a tenant in common is reported for informational purposes only.

**NOTE:** All property listed on the Information Report has the same requirements for values and appraisals as stated for the Inventory in a Regular Estate (Section 6 of this booklet).

### Application to Fix Tax on Non-Probate Assets (Form 1125)

Where there is no formal administration of an estate an Application to Fix Tax on Non-Probate Assets shall be filed within 90 days after the decedent's death.

## Section 5: Small Estates

### Claims

A claimant may make a claim against an estate, within the time allowed for presenting claims, by:

1. Serving it on the personal representative;
2. Filing it with the register of the county in which probate proceedings are being conducted and delivering or mailing a copy to the personal representative; or
3. Filing suit.

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

1. Six months after the date of the decedent's death; or
2. 30 days after the personal representative mails or otherwise delivers to the creditor a copy of the "Notice of Appointment, Notice to Creditors, Notice to Unknown Heirs" form or other written notice, notifying the creditor that his claim will be barred unless he presents the claim within 30 days from the mailing or delivery of the notice.

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 on the date of his death or in which real property or a leasehold interest in real property of the decedent is located.

A claim filed by the Department of Health against an estate must be filed within the earlier of the following dates:

1. Six months after publication of notice of the first appointment of a personal representative; or
2. Two months after the personal representative mails, or otherwise delivers to the Department's Division of Medical Assistance Recoveries a copy of the "Notice of Appointment, Notice to Creditors, Notice to Unknown Heirs" or other written notice, notifying the Department that the claim will be barred unless the Department presents its claim within two months from receipt of the notice.

**NOTE:** Additional forms may be required to open certain estates, depending on the circumstances.

## Section 6: Regular Estates

If the probate assets in Maryland have a value in excess of \$50,000 (or \$100,000 if the spouse is the sole legatee or heir) the estate shall be opened as a regular estate. To establish the value of an estate, include only assets held in the name of a decedent alone and/or an interest held as tenants in common. The value is the fair market value less any 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.

### Opening the Estate

The original of the Last Will and Testament and Codicil(s), if any, must be filed in the Register of Wills office in the county the decedent was domiciled.

The **Petition for Administration (Form 1112)** and **Schedule A (Form 1136)** are the forms that initiate the opening of the estate. These documents include the following:

- (1) The domicile of the decedent;
- (2) Reason the petitioner has a right to be appointed the personal representative;
- (3) Whether the decedent died with or without a will (if the decedent died with a will, the original must be included with the petition);
- (4) The eligibility of the petitioner to serve as personal representative; and
- (5) The approximate value of the probate assets and debts of the estate.

The **List of Interested Persons (Form 1104)** may also be filed at this time but must be filed within 20 days after appointment. The list includes the name, address and relationship to the decedent of persons named to inherit in the will and heirs at law even if they are not named in the will.

**Consent to Appointment of Personal Representative (Form 1118)** - See page 5.

**Appointment of Resident Agent (Form 1106)** - See page 5.

A **Nominal Bond (Form 1116)** or **Bond of Personal Representative (Form 1115)** must also be filed with the petition. The nominal bond may be used if bond is expressly excused by the will or if waived by all interested persons by signing a **Waiver of Bond (Form 1117 or Form 1118)**. The bond of personal representative is used if the bond is not expressly excused by the will or by written waiver of all interested persons. An insurance company must execute the bond form. There are companies that provide service through the Register of Wills office.

**Waiver of Bond (Form 1117 or Form 1118)** - See page 5.

**Waiver of Notice (Form 1101)** - See page 5.

The **Notice of Appointment (Form 1114)** must be filed with the Petition. The notice is published for three consecutive weeks by the Register of Wills in a newspaper of general circulation that is designated by the personal representative. This notice informs interested persons of their right to object to the appointment of the personal representative and the probate of the decedent's will, if applicable. It also informs creditors of their right to file a claim against the estate.

## Section 6: Regular Estates

### Appointment of Personal Representative

The Register of Wills may admit a will to probate and appoint a personal representative. The duties and powers of a personal representative commence upon issuance of **Letters of Administration**. In granting letters the register observes an order of priority as established in Maryland law. The usual order begins with persons named in a will, spouse, children, etc., to creditors or any other person. Maryland law has established restrictions on the right to letters of administration. (See page 6 for a list a partial list of some of the persons excluded).

Upon appointment, the Register of Wills office will issue a schedule of mandatory filing deadlines. As the personal representative of a regular estate, you are required to make a reasonably diligent effort to ascertain the names and addresses of the decedent's creditors, and mail or deliver a notice to those creditors. The personal representative is also required to file: sufficient copies of the notice of appointment provided to you by the newspaper for mailing by this office to all interested persons within 20 days of appointment; the Inventory and Information Report within three months of appointment; and the accounting within nine months of appointment. Unless a complete and accurate list of interested persons was previously filed, a list of interested persons with correct addresses (including zip codes) must also be filed within 20 days from the date of appointment.

### Inventory (Forms 1122 and 1123)

Within three months after the appointment of a 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. Appraisals must reflect the actual date of death value. Appraisals containing the word "approximate" or similar qualifying words are not acceptable.

Instead of obtaining an appraisal by a qualified and disinterested appraiser, the personal representative may appraise the following:

- (1) **Motor vehicles** 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's official used car guide; or (b) Any substantially similar price guide designated by the register;
- (2) **Corporate stocks** listed on a national or regional exchange or over the counter securities;
- (3) **Debts** owed to the decedent including bonds, notes and loans made by the decedent to others which remain unpaid;
- (4) **Bank accounts and money**;
- (5) **IRAs, annuities and life insurance** proceeds payable to the estate or which have no named beneficiary; and
- (6) **Real and leasehold property** may be valued at: (a) The full cash value for property tax assessment purposes, as of the most recent date of finality; or (b) The contract sales price for the property if the settlement on the arm's length contract occurs within one year after the decedent's death. The property tax assessment valuation cannot be used for farmland, woodland, or national registry land.

## Section 6: Regular Estates

### Accounts

Within nine (9) months after the appointment of the Personal Representative, they must prepare and file an Account with the Register of Wills. The account must include the following:

- The beginning balance;
- Disbursements;
- Miscellaneous principal receipts;
- Distribution and taxes; and
- Change in value of assets from date of death;
- Balance retained for future accounting (if applicable).
- Income;

The Register of Wills does not have a form for filing an Account. However, there is a Sample Account, Verification, and Certificate of Service available on the Registers' website under the "Publications" tab.

If the Account is not a Final Account, then subsequent Accounts must be filed at intervals of the first to occur of either six (6) months from the date the prior Account was approved or nine (9) months after the prior Account was filed. If an Account is due and the value of the estate has not changed since the prior Account, the Personal Representative may file an "Affidavit in Lieu of Account."

### Personal Representative's Commissions and Attorney's Fees

The Personal Representative and/or the attorney for Regular Estates and estates that proceed under Modified Administration are entitled to reasonable compensation for services rendered in the administration of the estate. Commissions and fees may be only granted in Small Estates by petition to the Orphans' Court.

Maryland law provides a maximum total for commissions and fees of 9% of the first \$20,000 of value of an estate (\$1,800) plus 3.6% of the value of an estate above \$20,000. Attorney's fees may exceed this maximum upon petition to the Orphans' Court and for good cause. Any payment out of estate funds made to the Personal Representative and/or the attorney for the estate are only permitted after the filing of the following, as applicable:

- **Subject to Court Approval:** A petition setting forth in detail the services performed on behalf of the estate and the amount of compensation requested may be filed with the Register of Wills and include a signed verification of the facts and a certificate of service to all interested persons.
- **Consent in Lieu of Court Approval:** If the commissions and fees do not exceed the maximum allowable, all interested persons consent, and those consents are filed with the Register of Wills, a petition is not required.
- **Payment for a Debt/Fee Generated Prior to Death:** May be paid after notice of the proposed payment is sent to all interested persons, stating the amount and the basis of the payment, pursuant to Md. Rule 6-414.

### Miscellaneous

#### Election to Take Statutory Share (Form 1126 or 1126A)

Instead of property left by the Last Will and Testament, the surviving spouse may elect to take a one-third share of the augmented estate if there is also surviving issue, or a one-half share of the augmented estate if there is no surviving issue. This is a complex area of estate law that may require consultation with an attorney.

#### Petition and Order for Funeral Expenses (Form 1130)

The Personal Representative is entitled to expend up to \$15,000 for funeral expenses, unless:

1. The estate is solvent and the Last Will and Testament expressly empowers the personal representative to pay the expenses without an order of the Orphans' Court; or
2. The estate is solvent and a Petition and Order for Funeral Expenses is approved by the Orphans' Court.

## Section 7: Modified Administration

Modified Administration is a streamlined procedure available in a regular estate where the decedent died on or after October 1, 1997. The procedure can only be used if:

1. The residual takers are limited to:
  - a. The personal representative;
  - b. Individuals or entities exempt from inheritance tax in the decedent's estate under §7-203 (b), (e), and (f) of the Tax-General Article; and
  - c. Trusts under which each person who has a current interest in the trust is an individual or entity exempt from inheritance tax in the decedent's estate under §7-203(b), (e), and (f) of the Tax-General Article; and
2. The estate is solvent and sufficient assets exist to satisfy all testamentary gifts.

This procedure eliminates the requirement of an Inventory (**Forms 1122 and 1123**) and account, requires minimal supervision by the Register of Wills, and rarely requires any action by the Orphans' Court.

The personal representative must file an **Election for Modified Administration (Form 1141)** within three months after the appointment as personal representative. All of the residuary legatees of a testate decedent or the heirs at law of an intestate decedent must also file a **Consent to Election for Modified Administration (Form 1142)** within three months after the appointment.

Instead of an Inventory and account, the personal representative must file a verified **Final Report Under Modified Administration (Form 1143)** and, if applicable, a **Certificate of Service (Form 1144)** no later than ten months after the date of the appointment. The Final Report must include:

1. A statement representing the continued qualification for modified administration;
2. Itemized schedule of the decedent's property and the basis of the valuation;
3. Itemized schedule of liens, debts, taxes, funeral expenses of the decedent, administration expenses of the estate, fee, any outstanding costs; and
4. Schedule setting forth distributive shares of the estate; and any applicable inheritance tax.

Final distribution of the estate must be made within 12 months from the date of appointment. An estate under modified administration should close not later than 13 months from the date of appointment.

If additional time is needed for the filing of the Final Report, the initial time periods for filing the Final Report and making distribution may be extended for 90 days on **Consent for Extension of Time (Form 1146)** signed by the personal representative and each interested person, and filed within ten months from date of appointment.

For a date of death on or after October 1, 2015, the register may extend the time periods for filing the Final Report and making distribution for an additional period not to exceed 90 days on the filing of a **Request for and Consent to Further Extend Time to File a Final Report and to Make Distribution in a Modified Administration (Form 1152)** signed by the personal representative and each interested person and filed before the expiration of the first extension period for filing the Final Report.

## Section 7: Modified Administration

Modified Administration can be revoked by the:

1. Filing of a timely request for judicial probate;
2. Filing of a written objection to modified administration by an interested person;
3. Filing of a withdrawal of the election by a personal representative;
4. Orphans' Court, on its own initiative, or for good cause shown by an interested person or by the Register of Wills; or
5. Failure to timely file the Final Report and make distribution.

If modified administration is revoked, the estate must proceed as a regular estate and the personal representative must file an Inventory and account with the Register of Wills. Notice of the revocation will be mailed to all interested persons by the Register.

If the personal representative discovers property of the decedent after the time for filing a Final Report Under Modified Administration, the personal representative shall file a Final Report with respect to the after-discovered property within 60 days of the discovery of property, and make final distribution of the property within 90 days of the discovery of the property.

## Section 8: Limited Orders

If a will is located in a safe deposit box in the decedent's name alone, or there are assets titled in the decedent's name alone and the amount of any asset is unknown, the only way to access the box or to ascertain the value of the assets is to file a **Petition for a Limited Order (Form 1147)** and **Schedule C (Form 1148)**.

A **Limited Order to Locate the Will (Form 1149)** authorizes the financial institution to enter the safe deposit box in the presence of the Register of Wills or the Register's authorized deputy for the sole purpose of locating the will for delivery to the Register of Wills office.

A **Limited Order to Locate Assets (Form 1150)** authorizes named financial institutions to disclose the values of assets titled in the sole name of the decedent. This Order will not authorize transfer of any assets. 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. **The issuance of this order is intended for the use of the person with priority to serve as personal representative.**

**The Register of Wills may charge a fee for affixing a seal to a Limited Order.** Note that no Letters of Administration will be issued to the petitioner.

## Section 9: Inheritance Tax

An inheritance tax is imposed on the right to receive property passing from a decedent that has a taxable situs in the State of Maryland.

Inheritance tax may be collected on (the net value of) all probate property reported in a regular estate and all non-probate property reportable on the Information Report or Application to Fix Inheritance Tax passing to individuals or entities not exempt from inheritance tax under § 7-203 of the Tax-General Article, regardless of the type of estate proceeding, and including property passing from a trust. (No inheritance tax is collected on probate property reported in a small estate).

For decedents dying on or after July 1, 2010, inheritance tax does not apply to the receipt of property that passes from the decedent for the use of:

1. A grandparent;
2. A parent;
3. A spouse or registered domestic partner (eff. 10/1/23) of the decedent;
4. A child of the decedent or a lineal descendent of a child of the decedent;
5. A spouse of a child of the decedent or a spouse of a lineal descendant of a child of the decedent;
6. A surviving spouse of a deceased child of the decedent or of a deceased lineal descendant of a child of the decedent who was married to the child or lineal descendant of the child at the time of the child's or lineal descendant's death;
7. A sibling of the decedent; or
8. A corporation, partnership, or limited liability company if all of its stockholders, partners, or members consist of individuals specified in items (1) through (7) above.

**NOTE:** (for inheritance tax purposes) "**Child**" includes a stepchild or former stepchild. "**Parent**" includes a stepparent or former stepparent. "**Surviving spouse**" means a surviving spouse who has not remarried.

For decedents dying on or after July 1, 2010, collateral inheritance tax at the rate of 10% applies to property of the decedent that passes to anyone other than those persons listed in (1) through (8) above.

Property **exempted** from inheritance tax includes the following:

1. Property that passes to any one person if the total value does not exceed \$1,000;
2. Property that passes to a charitable organization that is exempt from tax under Section 501(c)(3) of the Internal Revenue Code or certain transfers which are deductible under Section 2055 of the Internal Revenue Code in accordance with Tax - General §7-203(e);
3. A life insurance policy that is payable to a named beneficiary (other than the estate);
4. Property not in excess of \$500 that passes from a decedent under a will for grave maintenance;
5. Holocaust monies (contact the Register of Wills for details); and
6. Income on probate assets – For decedents dying on or after January 1, 1998, 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; and
7. Joint primary residence that passes from a decedent to or for the use of a "domestic partner" of a decedent within the meaning of section 6-101(a) of the Health-General Article.

## Section 9: Inheritance Tax

For decedents dying prior to July 1, 2010, contact the Register of Wills office for the appropriate rate of inheritance tax that was in effect at the date of death.

Inheritance tax on probate property is due when the personal representative accounts for the distribution of the taxable property in an accounting.

Inheritance tax on non-probate property is due when the Register of Wills assesses and bills for the amount based on the taxable property reported on the Information Report or the Application to Fix Inheritance Tax. (The tax is due on the clear fair market value as of the date of transfer or the date of death, whichever is applicable). Evidence of date of death balances (appraisals when necessary), evidence of outstanding liens on the property (such as a mortgage), and the name, address and relationship to the decedent of each beneficiary must be provided.

When an interest in a trust is subject to inheritance tax, in addition to a copy of the trust instrument, the following may be required:

1. A list of the assets,
2. A list of expenses paid or to be paid from the trust,
3. The names and addresses of the trustees,
4. The dates of birth of all life tenants, and
5. The relationship to the decedent of all beneficiaries.

**Trust documents are for review purposes only. The documents will not be made public record and will be shredded, or returned upon request.**

## Section 10: Distribution

If the decedent had a will, the personal representative must distribute the property according to the provisions in the probated will.

A surviving spouse or registered domestic partner is entitled to receive distribution of a family allowance in the amount of \$10,000. An allowance of \$5,000 must be paid for the use of each unmarried minor child (under the age of 18). (Contact the Register of Wills for family allowances applicable for a date of death prior to October 1, 2013).

Without court approval or intervention, a surviving spouse may elect to take their statutory share instead of the property left to them by will. This is known as the surviving spouse's "elective share," the calculation of which is provided for in Maryland law. There are time limitations on filing an election and other issues to consider, so a surviving spouse who is thinking about filing an election should consider consulting with an attorney.

If the decedent did not have a will, the personal representative must distribute the net estate to the heirs in the order prescribed by Maryland law. The order of distribution is described opposite.

### ORDER OF DISTRIBUTION OF NET INTESTATE ESTATE

If the decedent is survived by:

- a spouse or registered domestic partner and no children - the spouse or registered domestic partner receives the entire net estate
- a spouse or registered domestic partner and children, at least one of whom is a minor - the spouse or registered domestic partner receives one half of the net estate and the children divide the remaining one half equally\*
- a spouse or registered domestic partner and children, all of whom are adults and are children of both the spouse or registered domestic partner and the decedent - the spouse or registered domestic partner receives the entire net estate
- a spouse or registered domestic partner and children, all of whom are adults but at least one is not a child of both the spouse or registered domestic partner and the decedent - the spouse or registered domestic partner receives the first \$100,000 plus one half of the remaining net estate, and the children divide the remaining one half equally\*
- children only - the children divide net estate equally\*
- surviving parent(s) only - parent or parents receive the entire estate
- surviving sibling(s) only - siblings divide net estate equally\*
- grandparents without any other heirs listed above - the grandparents divide net estate equally (if all grandparents deceased, to issue of the grandparents)
- stepchildren without any other heirs listed above - stepchildren divide net estate equally
- no living heirs or stepchildren - the entire net estate passes to the Board of Education in the county in which the estate is opened, or to the Department of Health if the decedent received long term care benefits under the Maryland Medical Assistance Program

\*The share of a deceased heir in these categories passes to the issue of the deceased heir.

## Section 11: Fees

A probate fee is charged for the administrative processing of the estate. This fee is based on the total gross estate, as stated in the tables below. There may also be charges for additional services including, but not limited to, the following: additional Letters of Administration; plain, certified or exemplified copies; entering claims; and entering caveat papers.

### **SMALL ESTATE FEES**

*There is no fee for filing a petition to open a small estate in Maryland.*

### **REGULAR AND MODIFIED ESTATE FEES**

<b>If The Value Of The Estate Is At Least</b>	<b>But No More Than</b>	<b>The Fee Is:</b>
---	\$50,000	\$0
\$50,000	\$100,000	\$100
\$100,000	\$500,000	\$200
\$500,000	\$1,000,000	\$1,000
\$1,000,000	\$2,500,000	\$2,000
\$2,500,000	\$5,000,000	\$5,000
\$5,000,000	\$7,500,000	\$7,500
\$7,500,000	\$10,000,000	\$10,000
\$10,000,000	---	\$10,000 plus .02% of excess over \$10,000,000

**Note: A detailed list of all fees charged by the Register of Wills is available on the Registers' website at <https://registers.maryland.gov>.**

## Section 12: Important Deadlines

### Small Estate

1. If the decedent had a will, the custodian of the original document must file it with the Register of Wills promptly after the date of death.
2. The Petition for Probate, Schedule B and all required papers should be filed with the Register of Wills promptly after the date of death.
3. The Notice of Appointment for a Small Estate must be filed if there are remaining assets after payment or deduction of funeral expenses, family allowance, and Register's fee.
4. The Information Report must be filed within three months after date of appointment.

### Regular Estate

1. If the decedent had a will, the custodian of the original document must file it with the Register of Wills promptly after the date of death.
2. The Petition for Probate, Schedule A and all required papers should be filed with the Register of Wills promptly after the date of death.
3. The List of Interested Persons must be filed either with the Petition for Probate or within 20 days after appointment of personal representative.
4. The Inventory and Information Report must be filed within three months after appointment of the personal representative.
5. The first account must be filed within nine months after appointment of the personal representative.
6. If subsequent accounts are necessary, they must be filed at intervals of the earlier of six months after the prior account was approved, or nine months after the prior account was filed.

### Modified Administration

1. The Election for Modified Administration and consent forms from all residuary legatees/heirs must be filed within three months after date of appointment of personal representative in a regular estate.
2. The Information Report must be filed within three months after date of appointment.
3. The Final Report must be filed within ten months after date of appointment unless an extension was approved.
4. Inheritance taxes (if applicable), probate fee, and any additional costs are due at the time the Final Report is filed.
5. Complete and final distribution must be made within twelve months from date of appointment, unless an extension was approved.

## Section 13: Responsibilities of a Personal Representative

The personal representative of an estate has a fiduciary obligation to settle the estate and distribute the assets as promptly as possible, in accordance with the terms of the will or the laws of intestacy.

The position of personal representative is one of confidence, trust and good faith. It is held to the highest standard of care acknowledged by the law. The personal representative may incur personal liability if they fail to meet this standard.

## Section 14: Powers & Duties of a Personal Representative

The personal representative may exercise the authority granted to them by statute or in the will, without approval of the court.

These powers include: receiving and holding assets, depositing funds, satisfying charitable pledges made by the decedent, paying or compromising claims, paying funeral expenses and other debts or expenses, paying taxes, insuring property, investing or selling property, continuing a business, performing contracts entered into by the decedent, employing specialists to advise or assist, and making partial or final distributions during the administration of the estate.

Other powers may be granted to the personal representative by the court upon written request.

In addition to the above powers, the personal representative has a statutory obligation to timely file all required documents, comply with all court orders, and give proper notice to interested persons when necessary.

## Section 15: Frequently Asked Questions & Answers

### What is a will?

A will is a written document, legally executed, which directs disposition of one's property after death. A will only controls those assets that are in the name of the decedent alone or as tenants in common. It has to be in writing, signed by the testator (person making the will), and attested and signed by two or more credible witnesses in the presence of the testator. It becomes effective upon the death of the testator and is probated. If you have a will prepared outside of Maryland and then move into Maryland, it is valid if it is executed in accordance with the laws of the state in which it was prepared. However, if you move to another state, check with its Register of Wills or Clerk in the Probate Division of your new jurisdiction to determine if your will prepared in Maryland is valid. Laws vary in different states.

### Where should I keep my will?

Once a will is prepared, signed and witnessed properly, be sure to keep it in a safe place where it cannot be lost, stolen or misplaced. A safe deposit box is a secure place, provided someone is aware of its location. If the safe deposit box is in your name only, upon your death it is necessary for a deputy from the Register of Wills office to be present at the opening of the safe deposit box and removal of the will for filing with the Register of Wills.

You may also file your will with the Register of Wills for safekeeping for a fee of \$5.00. An original will brought to the Register of Wills for safekeeping will be sealed in an envelope and you will be asked to print your name, address, and last four digits of your Social Security Number on the space provided on the envelope. During your lifetime, the will you deposited in the Register of Wills office cannot be opened or released to anyone but you or a person authorized by you in writing to receive it. If you need to make a copy of the will once it has been filed, you may visit the Register of Wills, who will have you witness it being opened, copied, then re-sealed in a new envelope. You should always make sure that the person you have named as your personal representative is made aware of the location of your will.

## Section 15: Frequently Asked Questions & Answers

### **What should I do with a will after a person dies?**

After the death of a person, the person having custody of the will should present the will to the Register of Wills. If the person having possession of the will is the nominated personal representative, they should call the office prior to arrival to determine if additional forms and documents may be required. You may also schedule an appointment with a deputy in order to obtain faster service.

A custodian who willfully fails or refuses to deliver a will to the register after being informed of the death of the testator is liable to a person aggrieved for the damages sustained by reason of the failure or refusal.

### **Does a spouse have the right to renounce a will?**

Instead of property left to him or her by a will or if omitted by a will, the surviving spouse may elect to take what is known as their "elective share" of the "augmented estate" of the decedent. Maryland law determines which assets of the decedent are includable in their "augmented estate," which is then used to calculate the spouse's share. This is a relatively new and complex aspect of Maryland law, so a surviving spouse who is thinking about filing an election should consider consulting with an attorney.

The election by a surviving spouse to take an elective share shall be made within the later of: nine months after the date of the decedent's death; or six months after the first appointment of a personal representative under a will. The court may extend the time for election, before its expiration, for a period not to exceed three months at a time, upon notice given to the personal representative and for good cause shown.

### **What is a caveat?**

A caveat of a will is the challenge of the validity of any instrument purporting to be the decedent's will or codicil, whether or not offered for or admitted to probate. A caveat may be filed by an heir of the decedent or a legatee in any instrument purporting to be a will or codicil of the decedent. It requires a judicial hearing with notice being sent to all interested persons. Fees must be paid when the petition is filed. If a personal representative has been appointed prior to the petition to caveat being filed, the appointment of the personal representative is reduced to that of a special administrator until a determination as to the validity of the will is made by the court.

The individual challenging the will or codicil, known as the "caveator," may petition the Orphans' Court to transmit the caveat to the Circuit Court, where they are entitled by law to a bench trial (before a judge) or a civil jury trial.

### **Is an estate always required?**

If a person dies owning any property in their name alone or as tenants in common it is necessary to open an estate with the Register of Wills office. The value of the assets in the name of the decedent alone or a tenant in common determines the type of estate that is required. (See Small Estate, Regular Estate, and Modified Administration sections of this book for further information).

### **If an estate is not required do I still have to file the will?**

If the decedent did not have any property in their name alone or as a tenant in common, you are still required to file the will with the Register of Wills office in the county in which the decedent was domiciled at the time of death.

## Section 15: Frequently Asked Questions & Answers

### Who has priority to be paid if there are insufficient assets?

The personal representative shall make payment in the following order if the assets of the estate are insufficient to pay all claims in full:

- Fees due to the register;
- Costs and expenses of administration;
- Funeral expenses not to exceed \$15,000 (applicable for estates opened on or after October 1, 2015);
- Compensation of personal representative in a regular estate, legal services and commissions of licensed real estate broker;
- Family allowance – Spouse or registered domestic partner \$10,000; each minor child of the decedent \$5,000 (contact the Register of Wills for the family allowance applicable for a date of death prior to October 1, 2013);
- Taxes due by the decedent;
- Reasonable medical, hospital, and nursing expenses of the last illness of the decedent;
- Rent payable by the decedent for not more than three months in arrears;
- Wages, salaries or commission for services performed for the decedent within three months prior to death of the decedent;
- Public assistance claims; and
- All other claims

A preference shall not be given in the payment of a claim over another claim of the same class. However, claims filed by the Department of Health receive a priority over all other claims of the same class. (See § 8-105 of the Estates and Trusts Article.)

The Federal Insolvency Statute, 31 U.S.C. §3713, gives absolute priority for debts due to the United States, such as taxes due to the IRS.

### What is a resident agent and what are the responsibilities?

A nonresident of the State does not qualify to be appointed personal representative unless on file with the Register of Wills office is an irrevocable designation by the nonresident of an appropriate person who resides in the State. That person, upon accepting the appointment and signing a form with their address, then becomes the resident agent. The only responsibility of the resident agent is to accept service of process in the same manner and with the effect as if it were served personally in the State on the nonresident.

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