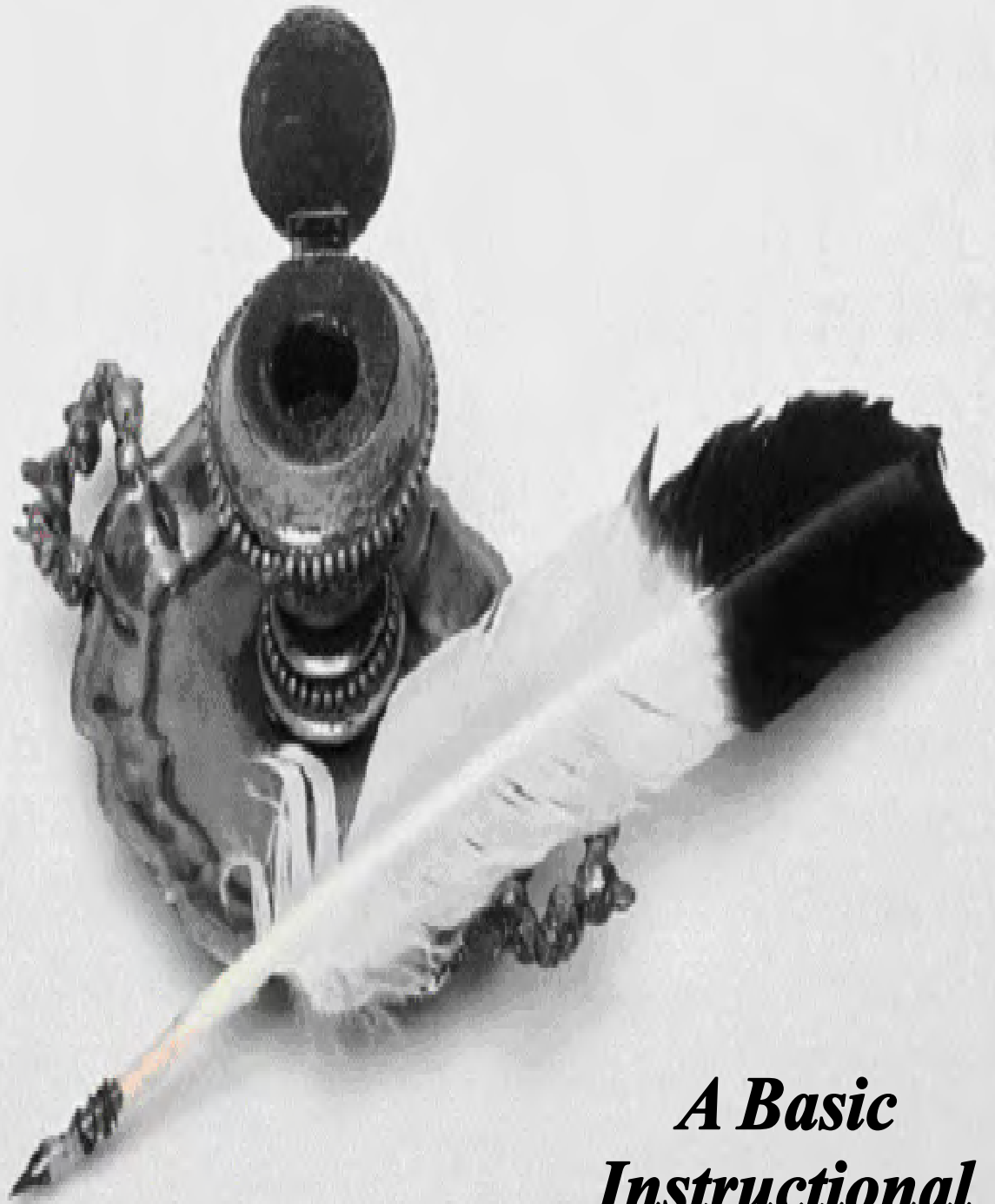


ADMINISTERING ESTATES IN MARYLAND



*A Basic
Instructional
Guide*

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Words of Warning!

The Register of Wills 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.

Section 1: Introduction

The Maryland Court of Appeals has adopted rules and forms to be used in settling a decedent's estate. The purpose of this booklet is to inform you about this procedure and how to prepare the necessary forms in the event that you are selected to act as a personal representative of an estate. The booklet only discusses the most common forms used in administrative probate. All forms for settling a decedent's estate are available in the Office of the Register of Wills in the county where the decedent lived. More information about the forms discussed in this booklet, along with other forms, can be found in the Maryland Rules of Procedure, Title 6, available at most public libraries. Both the Maryland Rules and the Annotated Code of Maryland - Estates and Trusts Article ("ET") can be accessed online at the Maryland General Assembly website: www.mgaleg.maryland.gov.

This booklet addresses only aspects of estate administration in the State of Maryland. It does not include any information about state or federal income tax or estate tax returns. It also does not address the administration of estates with property located outside of the State of Maryland that may be subject to another state's jurisdiction or laws.

This guide will not answer all questions related to the administering of estates in Maryland and it is not intended as a substitute for professional legal or financial advice which may be important to the administration of estates.

Section 2: Register of Wills

The Register of Wills is a public office established under the Constitution of Maryland. The Constitution provides for a Register of Wills in each county and Baltimore City. The Register is elected every four years. The Register of Wills, or designated employee, may assist and advise any person in the preparation of forms for administrative probate; but are prohibited from rendering legal advice. All forms referred to in this book may be obtained from the Register of Wills office or web site. <http://registers.maryland.gov> (select FORMS tab or link). Forms may be downloaded as required or completed online and printed individually. Please note that the forms are in PDF format, thereby requiring Adobe Reader software to be installed on your computer.

Section 3: Orphans' Court

The Orphans' Court, located in each county and Baltimore City, has jurisdiction over estates of deceased persons. The Orphans' Court hears all matters involving contested estates and supervises all estates that are probated judicially. Judicial probate is a proceeding that takes place when matters cannot be handled administratively.

The Orphans' Court resolves matters involving the validity of wills and the transfer of property in which legal questions and disputes occur. Because the Orphans' Court has limited jurisdiction, generally questions of legal title must be determined by the circuit court. An Orphans' Court has jurisdiction to determine whether personal property, not exceeding \$50,000 in value, is includable in the estate, subject to a proceeding before the Court. The Orphans' Court approves accounts personal representative commissions and attorney's fees for services rendered in connection with the administration of the estate. ET Title 2, subtitle 1

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 by an interested person with the Register of Wills 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 legitimate child, an adopted child, an illegitimate 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.
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 bloodline of an ancestor. (Descendants include 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 him/her to receive a statutory share, even if it is more than the will provided.
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 under the laws of intestacy (decedent died without a will).
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.
19. **Intestate:** without a will.
20. **Issue:** every living lineal descendant except a lineal descendant of a living lineal descendant, including a legitimate child, an adopted child, an illegitimate 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, his/her share passes automatically by operation of law to the survivor(s).
22. **Judicial probate:** a probate proceeding conducted by the Orphans' Court (as opposed to the Register of Wills) when the situation prohibits administrative probate (such as, validity of the will is questioned, will is damaged, or more than one qualified person applies for personal representative).
23. **Legatee:** a person named in a will to receive.
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 allowing for the search of assets in the decedent's name alone or the will located in a safe deposit box in the name of the decedent.
26. **Lineal:** heir or legatee: one who is of the direct line of the decedent.
27. **Modified Administration:** a streamlined version of administrative probate available to the personal representative (in estates where the decedent died on or after October 1, 1997). 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. (See Section 8 of this booklet for details.)
28. **Net estate:** property remaining after the deduction of liens, debts and expenses.
29. **Non-probate estate:** property that passes outside the probate estate, 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.
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 giving 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. **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).*
37. **Special Administrator:** an 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.)
38. **Tenants by the entirety:** a type of ownership that is created only between husband and wife where they hold title to an interest in property together, with the right of survivorship upon the death of the first to die.
39. **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, his/her interest passes to the heirs under the laws of intestacy, or in accordance with the terms of the will.
40. **Testamentary Trust:** a trust that is created by a will and takes effect when the settlor (testator/ testatrix) dies.
41. **Testate:** dying with a will.
42. **Testator/testatrix:** male/female who makes a will.
43. **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: Regular Estate

If the property of the decedent subject to administration in Maryland is established to have a value in excess of \$50,000 (or \$100,000 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.

The estate is opened in the county in which the decedent had his domicile at the time of death.

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 **Notice of Appointment (Form 1114)** must be filed with the Petition. The notice is published by the Register of Wills office

once a week for three consecutive weeks in a newspaper of general circulation that is designated by the personal representative. The notice informs persons of their right to file objections to the appointment and probate of the will. The notice further notifies creditors of their right to file a claim and the requirements.

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 by written waiver of all interested persons. 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.

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. Additional forms may be required depending on the circumstances.

The **Appointment of Resident Agent (Form 1106)** is required if the person petitioning is not a Maryland resident. (Refer to page 26 "What is a resident agent and what are the responsibilities?")

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

A **Waiver of Bond (Form 1117, or Form 1118)** above) must be filed by all interested persons if the will does not excuse bond requirements and the estate wishes to file a nominal bond.

Any interested person may sign the **Waiver of Notice (Form 1101)** to avoid notice requirements to that interested person.

Appointment of Personal Representative

The Register of Wills may admit the will to probate and appoint a personal representative. The duties and powers of a personal representative commence upon the 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. 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 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.

The personal representative may appraise the following:

- (1) Motor vehicles – 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'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 – Instead of a formal appraisal of the fair market value, 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.

* Either the average of the retail and trade-in values of the vehicle or the private party value of the vehicle is acceptable.

** The property tax assessment valuation cannot be used for farmland, woodland, or national registry land.

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

Information Report (Form 1124)

Within three months after the appointment of a personal representative, the personal representative shall prepare and file an Information Report. The assets reported on this form include assets that the decedent held a less than absolute, or whole interest at date of death and assets that had a previously designated beneficiary. Therefore, these assets would 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 pursuant to § 7-203 of the Tax-General Article 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; and
- (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 tenants in common, is reported for informational purposes only.

All property listed on the Information Report has the same requirements for values and appraisals as stated in the section for Inventories in this booklet.

Accounts

Within nine months after the appointment of a personal representative the personal representative shall prepare and file an account. The account should include:

- (1) The beginning balance (represents the value of the assets as reported on the Inventory);
- (2) Miscellaneous principal receipts;
- (3) Change in assets from date of death;
- (4) Income;
- (5) Disbursements;
- (6) Distribution and taxes; and
- (7) Balance retained for future accounting, if not a final account.

There is not a form for filing an account; however, the Register of Wills office has a sample account that may be used as a guideline. If the account is not a final, then subsequent accounts must be filed at intervals of the first to occur of: six months after the prior account is approved or nine months after the prior account is filed. If an estate has had no assets during an accounting period, the personal representative may file an affidavit of no assets in lieu of an account.

The account or affidavit must be verified and notice of the account or affidavit served on all interested persons who have not waived notice.

See below for sample of verification of the account and information required to be included in the notice.

VERIFICATION OF ACCOUNT MD RULE 6-417(b)(9)

I DO SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT (ACCOUNT OF PERSONAL REPRESENTATIVE) ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Personal Representatives
(Signature required)

Attorney
(Signature required if applicable)

CERTIFICATE OF SERVICE MD RULE 6-417(d)

I HEREBY CERTIFY that on the ____ day of _____, 20____, I delivered or mailed, postage prepaid, a notice to all interested persons listed below or listed by attachment, a notice stating: (1) that an account or affidavit in lieu of account has been filed; (2) that the recipient may file exceptions with the Court within 20 days from the Court's Order approving the account; (3) that further information can be obtained by reviewing the estate file in the office of the Register of Wills or by contacting the personal representative or the attorney; (4) that upon request the personal representative shall furnish a copy of the account or affidavit to any interested person who was given notice; and (5) that distribution under the account as approved by the Court will be made within 30 days after the Order of Court approving the account becomes final.

Interested persons names and addresses:

Personal Representatives
(Signature required)

Attorney
(Signature required if applicable)

Personal Representative's Commissions and Attorney's Fees

The personal representative and/or the attorney for the estate are entitled to reasonable compensation for services rendered in the administration of the estate. If the property subject to administration is not over \$20,000, commissions may not exceed 9% of the gross estate. If the property subject to administration is over \$20,000, commissions may not exceed \$1,800 plus 3.6% of excess over \$20,000 of the gross estate.

Any payment out of estate funds made to the personal representative and/or the attorney for the estate are only permitted after 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 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.
- **Consent in lieu of court approval (Form 1138)** - A petition is not required if the combined sum of the commissions and fees does not exceed the maximum allowable amount as stated above; **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.

- **If payment is for a debt or fee which was generated prior to the decedent's death**, a notice of proposed payment stating the amount and the details for the basis of the payment must be sent to all interested persons including all claimants pursuant to Md. Rule 6-414.

Claims

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

- (1) Delivering or mailing it to the personal representative;
- (2) Filing the claim with the register of the county in which probate proceedings are being conducted or 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) Two months 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 two months from the mailing or other 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 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 the estate of a decedent 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. ET 8-103(f)

Effect of the Approval of an Interim Account and the Final Account

The register shall promptly audit the account. Following the audit and approval of the account by the court, the court immediately shall execute an order of approval subject to any exceptions. Exceptions to the account shall be filed within 20 days after entry of the order approving the account and shall include the grounds for the exceptions in reasonable detail. A copy of the exceptions shall be served on the personal representative. If no timely exceptions are filed, the order of the court approving the account becomes final. Distribution under the account as approved by the court must be made within 30 days after the order of court approving the account becomes final. The final approval of the final account automatically closes the estate.

Miscellaneous

Election to Take Statutory Share (Form 1126)

Instead of property left by the 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 surviving issue.

Petition and Order for Funeral Expenses (Form 1130)

Funeral expenses shall be allowed at the discretion of the court. In no event may the allowance exceed the statutory amount of \$15,000 unless:

- (1) The estate of the decedent is solvent and a special order of court has been obtained; or
- (2) The estate is solvent and the will expressly empowers the personal representative to pay the expenses without an order of court.

Section 6: Small Estate

If the property of the decedent subject to administration in Maryland is established to have a value of \$50,000 or less (or \$100,000 if the 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 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.

Documents Required

As petitioner for appointment as personal representative, the official process of opening the small estate is started by filing the **Petition for Administration (Form 1103)** and **Schedule B (Form 1137)**. 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 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);
- (6) Any lien secured by the property, such as mortgage on home or lien on vehicle; and
- (7) A list of known creditors.

Supporting documentation showing the value of each asset as of the decedent's date of death may be required. If there is a mortgage or lien on the property,

documentation as to the amount owed at the time of death should also be filed.

Probate property consists of real and personal property owed solely by the decedent or as a tenant in common.

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 that the decedent was domiciled.

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

The **List of Interested Persons (Form 1104)** must be filed prior to the appointment of a personal representative. The list includes 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. The list also includes the personal representative (petitioner). When distribution is to be made to a trust, each trustee is an interested person. Indicate the relationship of each interested person to the decedent.

An interested person may sign the **Waiver of Notice (Form 1101)** to avoid notice requirements to that interested person.

The **Appointment of Resident Agent (Form 1106)** is required if the person petitioning is not a Maryland resident. (Refer to page 26, "What is a resident agent and what are the responsibilities?")

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.)

When the estate is established to have a value of \$10,000 or more after the payment of allowable expenses, a **Bond of Personal Representative (Form 1115)** is required unless bond is excused in the probated will, or each interested person files a **Waiver of Bond (Form 1117, or Form 1118** above)

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

Appointment of Personal Representative

The Register of Wills may admit the 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. 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. You are also required to file an Information Report.

Information Report (Form 1124)

Within three months after the appointment of a personal representative, the personal representative shall prepare and 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 would 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 pursuant to § 7-203 of the Tax-General Article 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.

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 5 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.

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 other 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.
- ET 8-103(f)

Section 7: Limited Orders

If a will is located in a safe deposit box in the decedent's name alone, or the assets are 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 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.**

Section 8: 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, and requires minimal supervision by the Register of Wills.

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.

For an estate opened on or after October 1, 2015, court approval for payment of funeral expenses in excess of the applicable statutory allowance of \$15,000 is not required when the personal representative includes the expenses on the Final Report.

On the request of any interested person, the personal representative must provide a formal inventory and account to all interested persons.

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 a modified administration is revoked, the estate must proceed as a regular estate administration and the personal representative shall 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 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 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 brother or sister 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.

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 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:

- (a) A list of the assets,
- (b) A list of expenses paid or to be paid from the trust,
- (c) The names and addresses of the trustees,
- (d) The dates of birth of all life tenants, and
- (e) The relationship to the decedent of all beneficiaries.

The 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 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.)

The contest of a will is beyond the authority of the Register of Wills and, therefore, is not discussed in this booklet.

Without court approval or intervention, a surviving spouse may elect to take his or her statutory share instead of the property left to him or her by will. This share is one-third of the net estate if there is also surviving issue or one-half of the net estate if there is no surviving issue. There are time limitations on filing an election and a withdrawal, and other issues to consider. Therefore, a surviving spouse who is thinking about filing an election should consider consulting an attorney for legal advice.

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 and children, at least one of whom is a minor - the spouse receives one half of the net estate and the children divide the remaining one half equally*
a spouse and children, all are adults - the spouse receives the first \$40,000 (\$15,000 for a date of death prior to October 1, 2017) 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*
a spouse and parents – a spouse is married <u>less than 5 years</u> , the spouse receives the first \$40,000 (\$15,000 for a date of death prior to October 1, 2017) plus one half of the remaining net estate and the parents divide the remaining one half, or the surviving parent receives the remaining one half
a spouse is married <u>at least 5 years or more</u> , the spouse receives the entire estate
a spouse without any other heirs listed above - the spouse receives the entire net estate
parents without any other heirs listed above - the parents divide the net estate, or the surviving parent receives the entire net estate
brothers and/or sisters without any other heirs listed above - the brothers and sisters 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)
great-grandparents without any other heirs listed above - divide net estate equally (if all great-grandparents deceased, to issue of the great-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.

If The Value Of The Small Estate Is Greater Than	But No More Than	The Fee Is
\$0	\$200	\$2
\$200	\$5,000	1% of the value of the small estate

- ❖ For a small estate having a value of more than \$ 5,000, see the regular estate probate fees listed below

If The Value Of The Probate Estate Is At Least	But Is Less Than	The Fee Is
----	\$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

Section 12: Important Dates for Personal Representatives to Remember

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.

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.

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 he/she fails to meet this standard.

Section 14: Powers and Duties of a Personal Representative

The personal representative may exercise the authority granted him/her 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: Questions and 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/testatrix (person making the will), and attested and signed by two or more credible witnesses in the presence of the testator/testatrix. It becomes effective upon the death of the testator/testatrix 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 a pre-numbered envelope and you will be asked to print your name, address, date filed, and who is filing the will 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 to a person authorized by you in writing to receive the same. If you need to make a copy of the will once it has been filed it is necessary for you to remove it and then the will may be re-filed for an additional \$5.00 fee. You should always make sure that the person you have named as your personal representative is made aware of the location of your will.

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 requirements may be applicable. You may also schedule an appointment with a deputy in order to promote 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/testatrix 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 a one-third share of the net estate if there is also a surviving issue (child or children), or a one-half share of the net estate if there is no surviving issue (child or children).

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.

Is an estate always required?

If a person dies owning any property in his or her name alone or as tenants in common it is necessary to open an estate in 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 Regular Estate, Small 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.

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 \$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.