

INTESTATE ESTATE ADMINISTRATION

PERSONAL REPRESENTATIVE HANDBOOK



**Judge Patrick H. Davenport
Houston County Probate Judge**

**PROBATE COURT OF HOUSTON COUNTY, ALABAMA
P. O. DRAWER 6406
DOTHAN, ALABAMA 36302**

REV. 10/14

INTRODUCTION

Naming the wrong person to administer an Estate can be disastrous. The person who administers the Estate must – with dispatch – often without compensation, but with great personal financial risk and without conflict of interest:

1. Collect all assets.
2. Pay all obligations.
3. Distribute the remaining assets to beneficiaries.

Although this three-step process seems simple, in reality these tasks can be highly complex, time consuming and in some cases technically demanding.

This booklet briefly discusses some of your duties and the standards of performance expected of you as the personal representative as you undertake the different steps and responsibilities involved in the administration of this Estate.

Estates vary in size, make-up and complexity. These differences make it almost impossible to address your duties and responsibilities in a few paragraphs. You have a real need to discuss specific details with your Attorney.

While a fair return is to be expected from investment of Estate funds and property, the protection and preservation of the Estate's principal should at all times be given paramount importance.

You need to be certain that you understand your duties and responsibilities that you have assumed in agreeing to administer this Estate. You should not hesitate to contact your Attorney for assistance as needed as you work towards closing the Estate at the earliest time after the six-months claim period has expired.

You, as Personal Representative, act for others' benefit. Your duty is to the Decedent's creditors and beneficiaries. Some may dismiss as incidental the role trustworthiness plays in the administration of an Estate. Nonetheless, the leadership role of the Personal Representative requires more than commitment and dedication; the position also tests the individual's capacity for honesty. Being honest and trustworthy are essential and compelling ingredients in serving as a fiduciary.

You, as a fiduciary, must not personally profit by virtue of your position. Without prior court approval there should not be any financial transaction between you as Personal Representative and you as an individual. You must be cautious and discreet in and about the handling of the Decedent's Estate, and you may not speculate. You are bound by that standard of care exercised by a prudent person handling the property of another.

In some estates there may be legitimate and fundamental causes that may temporarily

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interrupt the normal administrative process. However, a lack of discipline, procrastination and failure by the Personal Representative to promptly marshal Estate assets and complete the required inventory frequently create unnecessary problems and delays in the Estate's "closing."

Failure to maintain contact with your Attorney and keep heirs and next of kin generally informed and reasonably aware of the Estate's progress breeds and invites suspicion and needless controversy. This can disrupt the regular course of administration, prolong the Estate's administration and increase costs.

At the end of this pamphlet you will find a Certificate which is to be signed by you and your Attorney and returned to this Court before Letters of Administration can be granted.

DEFINITIONS

Some of the terminology used in the administration of an Estate of a Decedent may be unfamiliar to you. Therefore, some frequently used terms are set forth below and discussed briefly. Do not hesitate to discuss any of these with your Attorney if you have any further questions.

1. *Probate Court of Houston County.* This is the Court which has primary jurisdiction over the administration of your Decedent's Estate, unless you as Personal Representative or another interested party removes the administration to the Circuit Court of Houston County.

2. *Personal Representative.* This is the individual (you) appointed by the Probate Court and charged with the responsibility of collecting the assets of the Decedent, paying all proper obligations and distributing the remaining assets to the heirs.

3. *Estate.* Refers to the property of the Decedent whose affairs are to be administered in this proceeding.

4. *Exempt Property.* In Alabama, certain property of a Decedent is exempt from payment of debts and obligations where the Decedent leaves either a surviving spouse or children (in some cases only if at least one child is still a minor at the time of the death of the Decedent). You should be careful to review with your Attorney those assets which may fall within the category of "exempt" property, homestead allowance and family allowance.

5. *Heirs.* These are the individuals, including a surviving spouse, who are entitled under the law of Alabama to a part of the property of the Decedent who died without a Will.

6. *Minor.* A person under the age of 19 years is a minor, unless his disabilities of non-age have been removed by a court of appropriate jurisdiction. Any time a minor is involved in the Estate, that minor is entitled to separate representation. You will need advice from your Attorney as to when to request the Probate Court to appoint an attorney to protect the interest of that minor.

7. *Property.* This includes both real and personal property, or any interest therein, which the Decedent owned at the time of his or her death and did not, by contract, pass to some other person or organization. To the extent that the Decedent contracted otherwise, you may not be involved with (a) assets held by the Decedent during his or her lifetime with right of survivorship and (b) collection of life insurance policies, except in unusual situations. Your Attorney will be in a position to give you specific details on those assets covered and not covered by your administration.

8. *Settlement.* After the administration of an Estate has been commenced, you must at some point partially and/or finally conclude administration of the Estate by a proceeding in the Probate Court whereby you account to the court for all assets received, payment of all obligations and distribution of assets to the heirs. It is at this point that you will then become entitled to a court adjudication that you have properly performed your duties as Personal Representative and receive a discharge as Personal Representative.

9. *Letters of Administration.* This is the document you will receive from the Probate Court certifying to the world that you have been duly appointed as the Personal Representative of the Decedent's Estate. You will be asked to display a certified copy of this document from time to time during administration, so it is important that you keep on hand one or more certified copies at all times.

10. *Claims and Debts.* There is an important difference between a debt incurred by the Decedent prior to his death (we refer to that as a "claim" against the Estate) and an expense incurred after the Decedent's death by you or someone else for the benefit of the Estate (generally referred to as an "expense"). These will be discussed later in more detail.

INSTRUCTIONS

1. *Your Attorney.* In the course of administering the Estate, there is frequently a sense of uncertainty or vagueness as to "who is actually responsible for what." While the responsibility for carrying out certain prescribed duties and responsibilities may appear blurred, the obligation for performance rests by statute "squarely" on you as Personal Representative.

The role of your Attorney is to instruct, advise, counsel with and direct you as Personal Representative regarding your duties. Your Attorney also prepares all pleading, legal

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papers, reports, partial settlement, the final settlement and final report for the Estate. If the Estate should become involved in litigation, your Attorney would, likewise, represent you.

2. *Bond.* As Personal Representative, you will be required to file a bond with the Court through a surety company. Your Attorney will assist you. The bond premium must be paid when the bond is executed, and there will be a premium due each year thereafter until the Estate is closed. It is possible that new or additional items or funds belonging to the Estate may be found, or the security upon which the present bond is based is discovered to be insufficient. In that event, you should notify your Attorney and thereafter increase the amount of bond required by the Court to reflect the new or enhanced value of the Estate.

3. *Social Security.* You should determine whether or not the Decedent had a Social Security account and whether or not he, or members of his family, may be entitled to any Social Security benefits. In addition, there may be death benefits, and if the Decedent was a Veteran, he may be entitled to VA benefits. The local Social Security office should be advised of the Decedent's death. You may be required to return one or more of the last monthly payments, depending upon when you are appointed.

4. *Investigate Heirs.* **A full and accurate disclosure of the heirs at law is of critical importance. There are serious consequences to omitting heirs. The Personal Representative should investigate who are the heirs of the Decedent. In this regard, the Personal Representative should ascertain the following: (1) the name, age, address and condition of mind of the Decedent's surviving spouse; (2) the name, age, address and condition of mind of ALL of the Decedent's children (including illegitimate children or children born outside of a marriage); (3) whether the Decedent's child or children are also children of the Decedent's surviving spouse and if a child is not the child of the surviving spouse and the child is a minor, the name and address of the child's custodian; (4) if there are heirs who died before the Decedent, the name, age, address and mental condition of the predeceased heir's heirs and whether there is an active estate administration for the predeceased heir; (5) whether the Decedent adopted any child during the Decedent's lifetime and if so, the name, age, address and condition of mind of such child; (6) whether any of the Decedent's children were adopted by others; and (7) if there is no surviving spouse and no children, the name, age, address and condition of mind of the Decedent's other relatives, starting with the Decedent's parents, the Decedent's brothers and sisters, the Decedent's nieces and nephews, noting if any predeceased the Decedent. A review of the death certificate and the obituary are good points of reference, but they are starting points only. The Attorney for the Estate should assist the Personal Representative in ascertaining the identity of the Decedent's heirs and the Personal Representative should consult with the Estate's Attorney on any issue relating to the Decedent's heirs.**

5. *Notice to Creditors.* The law requires that you give NOTICE to all creditors of the Decedent's death. In Alabama there are two types of notice. The first is one which must be published in a local newspaper of general circulation in Houston County. It is the attorney's responsibility to provide notice of publication and payment to the news paper and provide proof of publication to the Probate Office.

In addition to the published notice, you are also required to send written notice by first class mail addressed to the last known address of any person, firm or corporation that you know of that may have a claim against the Decedent. If you have reason to believe that a person might be a creditor, but are uncertain, send the notice. Your Attorney can assist you in the language that you must use. **DO NOT** attempt to do this on your own.

6. *Bank Account(s).* A separate bank account must be established in your name as Personal Representative to hold the Decedent's funds. The account should be interest bearing. An Estate Tax ID number must be obtained in order to open this account. **Be sure that the bank you choose will return to you the original canceled checks each month OR provide statements with "thumbnail" images of canceled checks as this documentation may be needed for a partial or final settlement.**

7. *Telephone of Decedent.* You should discontinue phone service (and in some circumstances, other utility services as well). If others are using that service, they should bear the cost. The Estate should no longer pay for such service.

8. *Post Office Box or Street Address.* You should notify the U. S. Postal Service of the Decedent's death. All mail should be forwarded to you. As a matter of courtesy, you should notify any spouse or other person living at the residence of the fact such action is being taken.

9. *Gathering Assets.* You have a duty to search for assets of the Decedent and bring them into the Estate. After obtaining Letters of Administration, you must collect and take possession of the Decedent's property. However, under limited circumstances, you may be entitled to leave real estate and tangible personal property in the possession of someone else, but your Attorney should assist you in making this decision. Attached Exhibit A gives you a fairly complete list of assets to look for. Consult with your Attorney about any assets that are claimed by others or may be the subject of specific exemptions.

10. *Insurance of Assets.* The law requires you to take every reasonable precaution to safeguard, maintain and protect the assets of the Estate. This often includes maintaining or obtaining adequate insurance on the assets of value.

11. *Inventory of Assets.* Within 20 days of being appointed, you must file a signed, notarized initial inventory with the Court listing all known assets along with their fair market value at date of death. Within 60 days of being appointed, you must file a signed, notarized final inventory with the Court listing all known assets along with their

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fair market value at date of death. If additional assets are discovered, an amended inventory listing them must be filed. See Exhibit B for a satisfactory form for your inventory. Your Attorney will be able to advise you regarding the need for any formal appraisals.

12. *Ledger.* You are required to keep accurate records of all Estate receipts and expenditures by maintaining a ledger, a book or group of papers where all financial transactions are recorded. Attached Exhibit C sets forth a suggested set of forms which are satisfactory to the Court for you to use. You can obtain additional blank ledger sheets from the Court for this task. All cancelled checks and deposits should be in accordance with the ledger. Many Personal Representatives find it helpful to use a computer program such as Quicken® or Microsoft® Money as part of the record keeping system.

13. ***Settlement of Claims.*** Any and all settlement of claims, including but not limited to personal injury and wrongful death claims, are subject to Probate Court approval. In the absence of said approval, such settlements are not final and funds may not be disbursed. **IMPROPER PAYMENTS OR DISTRIBUTIONS COULD RESULT IN YOUR HAVING TO REIMBURSE THE ESTATE FROM YOUR OWN FUNDS.**

14. ***Wrongful Death Action Claims.*** Alabama law provides how the proceeds (whether through litigation or settlement) of wrongful death action claims are to be distributed. Generally speaking, such proceeds are not subject to the claims of creditors, including funeral expenses. **IMPROPER DISTRIBUTION OF ANY SUCH PROCEEDS WILL RESULT IN YOU HAVING PERSONAL LIABILITY AS TO PAYMENT OF ANY IMPROPERLY DISTRIBUTED FUNDS.** A personal representative is NOT entitled to be compensated from said proceeds unless all of the interest holders consent to the same. If you are going to maintain a wrongful death action claim and want to be compensated for your efforts, you are strongly encouraged to reach an agreement with the interest holders **BEFORE** the commencement of the wrongful death action and the agreement should be in writing and signed by the interest holders.

15. *Payment of Claims.* All of the Decedent's property subject to probate administration is subject to the debts of the Decedent incurred prior to his death, except for those assets exempted by Alabama law. (See the definition of "Property"). You are not allowed to pay any debts of the Decedent unless a written claim is filed in Court. Creditors have six months from the date the Estate is opened to file a claim with the Court; however, if you fail to timely give the "notice" discussed in paragraph 4 above, this time may be extended. If a claim is not filed within that time period, you are not permitted to pay that claim. There is an order as to the priority of the payment of claims. You should consult with your Attorney before any claims are paid.

16. *Payment of Estate Expenses Incurred by the Personal Representative.* You may pay funeral expense and administrative expenses you incur, such as bond

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premiums, attorney's fees or court costs without them being filed as claims. Also, you may pay charges incurred after the date of death on real estate such as taxes, insurance, utilities, or reasonable repairs necessary to protect and preserve the property during the first six (6) months of the administration, even though claims have not been filed for them. As soon as is practicable, you should determine the Estate's cash needs and consult with your Attorney as to whether or not you should seek Court approval of payment of these expenses. You can compensate yourself for services rendered upon obtaining Court approval.

17. *Investment of Assets.* Monies needed to pay current expenses should be maintained in readily available federally insured bank accounts, even if they do not draw interest. But, you should not keep the Estate's excess cash on hand. To the extent funds are not needed to pay debts and current expenses and are not immediately distributable, you must deposit them in federally insured interest bearing accounts, or other "legal list" accounts. Your Attorney can advise you concerning what investments are on the legal list. **PLEASE NOTE THAT GENERALLY SPEAKING YOU CAN NOT INVEST ESTATE ASSETS IN THE STOCK OR BOND MARKETS.**

18. *Co-mingling Assets.* **The Decedent's Estate assets must never be co-mingled with your property or that of others.**

19. *Attorney's Fees.* If your Attorney requires a retainer fee when the Estate is first opened, you may pay a reasonable amount. The Court will take such a retainer fee charge into consideration at the settlement. While you are authorized to pay your Attorney during administration, the amount of the attorney's fee may be set or adjusted by the Court at a settlement. If the Court does not allow at least as much as has already been paid, you are responsible for paying the excess back to the Estate.

20. *Personal Representative's Commission.* You will be allowed a commission for your services as Personal Representative. It will be set by the Judge at any partial or final settlement. Any commissions allowed at partial settlements will be taken into consideration in the commission set at final settlement. NOTE: The Court will not approve commissions on any wrongful death assets recovered.

21. *Tax Returns.* You must file any legally required personal income tax returns for the Decedent's income prior to his or her death, and fiduciary tax returns for the taxable income of the Estate earned during each year of the administration. If the Estate is substantial, you may also have to file an Estate Tax return. You should consult your Attorney as to what returns are required.

22. *Sale of Assets.* You may sell any part of the personal property for the payment of debts, to make distribution among the heirs, to prevent waste or prevent it from perishing. You also may sell real property in order to pay debts. Although personal property may be sold for the purpose of distribution to the heirs, real property cannot be sold for that purpose unless the heirs consent to the sale. However, all sales, mortgages, or leases of real or personal property of the Estate require Court approval

prior to the sale. You should consult with your Attorney prior to undertaking any transaction involving the title to any asset of the Estate.

23. *Solvency and Insolvency.* You should not pay any claims or make any distribution of assets until you have fully reviewed the assets and debts to determine the Estate's solvency. If the Estate is solvent, legitimate timely filed claims and administrative expenses may be paid at the appropriate time. Those that are not legally allowable must not be paid.

If the Estate becomes insolvent, you, through your Attorney, must notify the Court in writing. **Improper payments or distributions could result in your having to reimburse the Estate from your own funds.**

24. *Annual Partial Settlements and Accountings.* You must file an Annual Partial Settlement and Accounting of your administration of the Estate within 12 months of your appointment as Personal Representative, unless you have already filed a final settlement and once every twelve (12) months until the Estate is closed. It must include an accounting showing all receipts and disbursements of Estate funds and other assets during the year. Entries for the accounting should be made as receipts and disbursements occur; otherwise, mistakes may result. Keep all bills, invoices, statements, vouchers, voided checks, original honored checks, bank statements, receipts, and other supporting documents, as well as copies of your accountings. "Thumbnail" images provided by banks are acceptable in lieu of original checks.

25. *Partial Distributions to Heirs.* **Partial distributions without prior approval by the Court are strongly discouraged. If a Personal Representative makes a partial distribution to heirs before obtaining express approval by the Court to do so, the Personal Representative may have personal liability as to the payment of any improperly distributed funds.**

26. *Assets in Possession of Lawyers and Other Parties.* Generally lawyers should not hold funds belonging to the estate in the lawyer's trust or bank accounts without prior court approval. Such practice may be appropriate with regard to small amounts of money. However, you are responsible for all of the estate's funds including those held by your lawyer or other third parties.

27. *Final Settlement.* Once you have collected all the assets and paid all charges, and the time for the filing of claims has expired, you are required to render a final settlement of your administration of the Estate and distribute the remaining assets. A detailed accounting with supporting evidence must be filed and notice given to the heirs. If the heirs are satisfied that you have carried out your duties, the Estate may be closed by consent. You should consult with your Attorney, who will prepare the proper Petition for Final Settlement.

28. *Instructions.* These instructions are to be read by you and reviewed with your Attorney. Your understanding of them is essential to your proper administration of

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the Estate. You should retain them for ready reference. Consult with your Attorney throughout the Estate administration process and particularly when you have questions. ***Attached as Exhibit D is a certificate attesting to your reading, review, and understanding of these instructions. It is to be detached, executed by you and your Attorney, and mailed or delivered to the Judge of Probate along with the Estate inventory.***

The Probate Office will be happy to assist you and your Attorney throughout the administration of the Estate.

A handwritten signature in black ink that reads "Patrick H. Davenport". The signature is written in a cursive style with a large initial "P" and a distinct "H".

**Patrick H. Davenport
Houston County Judge of Probate**

EXHIBIT A

Assets to Look for in Preparing Inventory

- Cash on hand and belonging to the Estate
- Uncashed checks and refunds
- Deposit(s) in bank(s), savings and loan association(s), brokerage house(s), credit union(s), etc.:

(XYZ Bank, Checking Account No. 12-345-67)

(ABC Credit Union, Certificate of Deposit #777-7777)

- Stocks
- Bonds
- Promissory notes
- Partnership interest
- Other business interests
- Life insurance policies – payable to Estate
- Group life insurance payable to Estate
- Furniture
- Antiques
- Artwork
- Jewelry
- Chinaware
- Silverware
- Valuable collections (paintings, oriental rugs, coins, stamps, books, manuscripts, etc.)
- Vehicles (automobiles, trucks, vans, etc.) Include description, VIN and current tag number
- Safe Deposit Box – location and property description (list items having special value)
- Real estate – location and property description (metes and bounds or by map book and page reference)

Liabilities to Look For

- Notes payable to banks
- Notes payable to others
- Real estate mortgages payable
- Accounts payable
- Unpaid income taxes: federal, state
- Unpaid property taxes
- Other liabilities

EXHIBIT C

Ledgers and Records

The Personal Representative should maintain a ledger* that records by specific entry each and every receipt and disbursement of Estate funds. Proof and verification of individual entries are supported by retention of records such as follows:

Ledger No. 1

1. All cash receipts, refunds, dividends, interest, etc. (Such deposits should be posted or listed as an income entry in the ledger.)
2. All original checks or thumbnail copies of the front side of all checks drawn against the Estate's bank account including voided checks. (The respective check should be posted or listed as an expense entry in the ledger.) In lieu of original checks, "thumbnail" images provided by banks are acceptable.
3. All original bank statements issued indicating the individual checks drawn against the Estate's bank account during the statement cycle. (The income and expense entries on the statement should correspond to the respective entries in the ledger.)
4. All invoices, billing statements, vouchers and receipts for services rendered or items purchased should be preserved and held as proof in support of checks drawn in payment of any such bills.

Note: Each of the above proof items should be kept in chronological order.

Ledger No. 2

A separate ledger should be kept and maintained that identifies non-cash assets in the Estate with their description, location and their value, e.g.:

5. All Certificates of Deposit and any other investment account.
6. Any pending lawsuit or litigation.
7. All real property.

Note: Wherever possible, evidence (documentation) in support of the title to such property/item should also be kept, protected and held for safekeeping.

*See attached.

EXHIBIT D

IN THE PROBATE COURT OF HOUSTON COUNTY, ALABAMA

IN RE: THE ESTATE OF

Case Number _____

_____,
Deceased

CERTIFICATE

I, the Personal Representative duly appointed in the above numbered cause, hereby attest that I have read and reviewed the foregoing Probate Court Instructions to Personal Representatives (Rev. 10/14), discussed them with my Estate Attorney and understand them.

Signed this _____ day of _____, 20_____.

Personal Representative

Attorney

Probate Court Representative, Accounting

Probate Court Representative, Inventory

INSTRUCTIONS: The Personal Representative is required to review the Intestate Estate Administration Handbook with his/her attorney immediately upon appointment so that said Personal Representative will have a basic understanding of the duties and responsibilities to be undertaken. This Certificate must be executed by the Personal Representative and his/her attorney and filed with the Court before the granting of Letters of Administration. Following the filing of the petition, and/or hearing, if necessary, the Personal Representative is required to meet with Probate Court representative(s) to review accounting and inventory requirements. Once the Probate Court representative(s) has met with the Personal Representative and signed the certificate, the Letters of Administration will be presented to Judge Davenport for his signature and subsequent filing.