

Dennis R. Hower

New York Supplement To Accompany

**WILLS, TRUSTS, AND
ESTATE ADMINISTRATION
FOR THE PARALEGAL**

Fifth Edition

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In this supplement, a page reference follows each head—(Hower 000). This page reference correlates with Dennis Hower’s textbook, *Wills, Trusts, and Estate Administration for the Paralegal*, Fifth Edition.



INTRODUCTION

Before we begin a discussion of wills, trusts, and estates as they relate to New York law, it is important to note the prevailing sources of law regarding the same.

1. New York Estates, Powers, and Trusts Law (“NY EPTL”)

The NY EPTL governs the substantive law relating to wills and trusts. All wills and trusts drafted within the State must comply with the same.

The NY EPTL can be found online at <http://assembly.state.ny.us/leg/?cl=38>.

2. New York Surrogate’s Court Procedure Act (“NY SCPA”)

The NY SCPA governs the procedural aspects relating to estate administration. All decedents who leave property in the State of New York must comply with the provisions contained therein.

The NY SCPA can be found online at <http://assembly.state.ny.us/leg/?cl=116>.

3. Common Law

Along with the statutory law found in the State of New York, common law (otherwise known as case law) serves to interpret and explain the intent of the legislature in the formation of the statutory law. Such interpretations and explanations receive the full force and effect of law and, as a result, must be understood and followed.

4. Other State and Federal Statutory Laws

Please be aware that, similar to all other parts of law, the area of wills, trusts, and estates does not exist in a vacuum and is affected by various other State and Federal statutory laws from time to time.

1

THE PURPOSE AND NEED FOR A WILL

Statutory Requirements for a Will (Hower 2)

The statutory requirements for the creation of a will in the State of New York can be found in the *New York Estates, Powers, and Trusts Law* ("NY EPTL"). Similar to what the author states in the main text, New York also requires that a testator be eighteen years of age and of sound mind and memory in order to write a valid will. NY EPTL § 3-1.1. The statute does not go further in explaining "sound mind and memory," thus one must refer to case law for a proper understanding of the same. This will be discussed in further detail in Chapter 5.

Along with the basic prerequisites allowing an individual to create a will, New York also has formal requirements (with very limited exceptions) regarding the actual execution of a will. NY EPTL § 3-1.2. All wills in the State of New York must be in writing and signed at the end by the testator in front of two attesting witnesses. Further, the two witnesses must then, in turn, sign the will, with the inclusion of their addresses, in the presence of each other. Finally, at some point during the "will signing ceremony," the testator must acknowledge to the witnesses that the document he or she is signing is, in fact, his or her will.

As previously stated, there are very limited exceptions to the strict statutory requirements found in the NY EPTL for the formal execution of wills. These exceptions include holographic wills and nuncupative wills only. NY EPTL § 3-2.1. A nuncupative will is an unwritten or oral will which is stated in the presence of two witnesses. NY EPTL § 3-2.2 (a)(1). A holographic will is written completely in the testator's own handwriting and is not executed with the requisite formalities described in NY EPTL § 3-2.1. NY EPTL § 3-2.2 (a)(2). In either case, such wills are valid only if made by a member of the armed forces during an actual war or armed conflict, an individual accompanying the same during an actual war or armed conflict, or a mariner at sea. If the individual survives one of the previously mentioned events, the holographic or nuncupative will will then only continue to be valid for a limited time thereafter. NY EPTL § 3-2.2 (b).

Basic Terminology Related to Wills (Hower 3)

The information provided in the main text is applicable in New York State. It is important, however, to point out that the court that handles decedents' estate administration and trusts in New York is known as *Surrogate's Court*. There is one Surrogate's Court found in every county of the State, with the exception of New York County which has two.

Selection of Personal Representative (Hower 18)

The statutory qualifications of a personal representative are found in the *New York Surrogate's Court Procedure Act* ("NY SCPA"). According to NY SCPA § 707 (1), in order to be named as a personal representative of a decedent's estate, one must meet the following requirements:

1. Eighteen years of age or older.
2. Competent.

3. A New York State domiciliary *or* a non-domiciliary *resident* of the State.
4. Not convicted of a felony.
5. Not otherwise disqualified because of deceitfulness, carelessness, substance abuse, lack of cognition, or other reasons which make him or her unfit for the position.

Further, it is within the Court's discretion to determine the eligibility of those individuals to act as personal representatives who are unable to read or write the English language. NY SCPA § 707 (2).



2

THE CONCEPT OF PROPERTY RELATED TO WILLS, TRUSTS, AND ESTATE ADMINISTRATION

The information contained in the main text is applicable to the State of New York.

3

THE PARTICIPANTS AND THE PROPER COURT

The Personal Representative (Hower 70)

As the main text states, the personal representative nominated through a will is traditionally known as the executor (if a man) and executrix (if a female). Further, a personal representative appointed by the court when there is no will is traditionally known as the administrator (if a man) and administratrix (if a woman). The modern trend in the New York courts, however, is to refrain from using such traditional titles. Both men and women are commonly referred to as “executors” if nominated in a will and “administrators” if appointed by the court.

The Probate Court (Hower 78)

Although the majority of information provided in the main text is applicable in New York State, it is important to once again point out that the court which has jurisdiction over all matters relating to decedents’ estates and trusts in New York is known as the *Surrogate’s Court*. As previously stated, there is one Surrogate’s Court found in every county of the State (with the exception of New York County which has two). The appropriate venue for a probate proceeding (the exact Surrogate’s Court which will be used to handle the decedent’s estate) will be based on the domicile of the decedent at the time of death. NY SCPA § 205. Domicile is defined as that place which is a “fixed, permanent, and principal home to which a person wherever temporarily located always intends to return.” NY SCPA § 103 (15). Thus, if the decedent was domiciled in Buffalo, Erie County, the appropriate Surrogate’s Court would be the Erie County Surrogate’s Court, even if the personal representative lives in Monroe County.

The Registrar (Hower 79)

The judge in Surrogate’s Court in the State of New York is referred to as the “Surrogate.” Depending on the county within which the surrogate serves, the position will be gained either through election or appointment.

4

THE LAW OF SUCCESSION: DEATH TESTATE OR INTESATE

DEATH WITH A WILL—TESTACY (HOWER 90)

Terminology Related to Wills (Hower 90)

Holographic Will (Hower 91)

As previously stated on pages 3 and 4, the statutory law that governs holographic wills in the State of New York is NY EPTL § 3-2.2.

Nuncupative (Oral) Will (Hower 92)

As previously stated on pages 3 and 4, the statutory law that governs nuncupative wills in the State of New York is NY EPTL § 3-2.2.

Statutory Will (Hower 92)

New York State has neither a statutory will form nor a statutory will act which allows for a “fill-in-the-blank” type of will.

Living Will (Hower 97)

Although there is no statutory authority for living wills in the State of New York, the State’s highest court recognized their validity in *The Matter of O’Connor. Matter of O’Connor*, 72 NY 2d 517, 531 NE 2d 607, 534 NYS 2d 886 (1988). In *O’Connor*, the New York State Court of Appeals held that life-sustaining treatment could be withheld from a terminally ill patient “upon clear and convincing evidence that the patient intended to decline the treatment under the circumstances.” *Id.* The Court further stated that the “ideal situation” would be one in which the patient had memorialized his or her wishes in a written document while competent, thus evidencing the seriousness with which the individual was making the decision. It is important to note that the Court stopped short of stating that the only proof of clear and convincing intent is a written document, thus leaving the door open for allowing oral expressions of intent as well. *Id.*

Types of Dispositions—Gifts Made in a Will (Hower 97)

Ademptions, Lapses, and Abatement (Hower 99)

Abatement (Hower 101)

As stated in the main text, abatement lays out the plan by which testamentary gifts shall be applied to pay the estate bills. Unless a contrary plan for abatement is indicated by a New York State testa-

tor in his or her will, or through wording showing preferences for one beneficiary over another, New York State's plan for abatement is as follows:

1. Intestate Property (that property which has not been disposed of by a will).
2. Residuary Dispositions.
3. General/Demonstrative Dispositions.
4. Specific Dispositions.
5. Dispositions to a surviving spouse, which qualify for the estate tax marital deduction.

NY EPTL § 13-1.3

New York State's Antilapse Statute (Hower 102)

The NY EPTL § 3-3.3 provides that *only* those dispositions made to the testator's issue or the testator's siblings will not lapse.

DEATH WITHOUT A WILL—INTESTACY (HOWER 106)

Intestate Succession Laws (Hower 109)

General Rules of Distribution under State Intestate Succession Statutes (Hower 116)

On page 33 of the main textbook, the author provides the New York State intestacy law found in NY EPTL § 4-1.1. Under § 4-1.1 of the NY EPTL, an intestate's estate will be divided as follows if he or she is survived by:

- **A spouse and issue:** \$50,000.00 and one-half of the residue to the spouse and the balance to the decedent's issue by representation.
- **A spouse and no issue:** All to the spouse.
- **Issue and no spouse:** All to the issue by representation.
- **One or both parents, and no spouse or issue:** All to the surviving parent(s).
- **Issue of parents, and no spouse, issue, or parents:** All to the issue of parents by representation.
- **One or more grandparents or the issue of grandparents** (not to include issue more remote than grandchildren which would be the decedent's first cousins), no spouse, no issue, no parents, or no issue of parents: one-half to the surviving paternal grandparents and, if they are deceased, to their issue by representation. One-half to the surviving maternal grandparents and, if they are deceased, to their issue by representation.
- **Great-grandchildren of grandparents, and no spouse, no issue, no parents, no issue of parents, no grandparents, no children of grandparents, or grandchildren of grandparents:** one-half to the great-grandchildren of the paternal grandparents per capita and one-half to the great-grandchildren of the maternal grandparents per capita.
- **None of the above:** The decedent's estate escheats to the State of New York.

Along with the above-stated intestacy scheme, New York State law provides for the following rules of distribution:

1. Relatives of the half blood are treated as if they were relatives of the whole blood. NY EPTL § 4-1.1.
2. A parent will be disqualified to take the intestate share of a child if the parent failed to provide for or abandoned the child while the child was under the age of twenty-one. This prohibition

against inheritance can be changed if there is proof that the parent and child resumed and subsequently continued their relationship prior to the child's death. NY EPTL §4-1.4.

After careful review of the statute, two thoughts come to mind. First, the State's great desire to distribute the estate to *someone* related to the intestate decedent. Why else would it try to track down great-grandchildren of the decedent's grandparents? Second, those with the closest familial relationship to the decedent will have the first opportunity to inherit, and those with the most remote familial relationship will inherit last. This is based on the State's interest to follow what it believes would be the intestate's wishes were he or she to have written a valid will.

RIGHTS OF FAMILY MEMBERS TO A DECEDENT'S ESTATE (HOWER 117)

Rights of a Surviving Spouse (Hower 117)

Surviving Spouse's Testate and Intestate Rights (Hower 117)

As stated in the main text, a surviving spouse's inheritance is generally determined by the will or, if there is no will, through the intestacy laws of the State. A discussion of New York State's intestacy law is found on page 9 of this supplement.

Surviving Spouse's Elective (Forced) Share (Hower 119)

New York State provides a spouse's right of election in NY EPTL §§ 5-1.1 and 5-1.1A. Under the statutes, a spouse's right of election is dependent upon the date of the execution of the will to be probated, but both share in common the legislative intent that individuals should not be permitted to disinherit their spouses. The spousal right of election is as follows:

- NY EPTL § 5-1.1 (a)—election by a surviving spouse against a will executed after August 31, 1930 and before September 1, 1966. The surviving spouse is entitled to an elective share of one-third of the net estate if the decedent is survived by one or more issue or one-half of the net estate if there are no issue. The net estate is computed by deducting the debts, administration, and reasonable funeral expenses from the gross (total) estate of the decedent.
- NY EPTL § 5-1.1 (c)—election by a surviving spouse against a will of a decedent who dies after August 31, 1966 and before September 1, 1992. The surviving spouse is entitled to an elective share of one-third of the net estate if the decedent is survived by one or more issue or one-half of the net estate if there are no issue. Similar to NY EPTL § 5-1.1 (a), the net estate is computed by deducting the debts, administration, and reasonable funeral expenses from the gross (total) estate of the decedent. However, under NY EPTL § 5-1.1 (b) and (c), the following items are now included in computing the value of the net estate in order to prevent the decedent from fraudulently transferring assets out of the estate and thus effectively disinheriting the spouse:
 - A. Gifts made in contemplation of death.
 - B. Money deposited and interest credited to a savings account in the name of the decedent in trust for another person (i.e., a totten trust/bank account).
 - C. Money deposited and interest credited to a savings account in the name of the decedent jointly with another.
 - D. Any other distribution of property by the decedent where it is held in the decedent's name and the name of another as joint tenants with rights of survivorship.
 - E. Any trust which reserves to the decedent the power to invade during his or her lifetime.

- NY EPTL § 5-1.1—A—election by a surviving spouse against a will executed by a decedent who dies on or after September 1, 1992.
The surviving spouse is entitled to an elective share of the first \$50,000 or one-third of the decedent's net estate, whichever is greater. The decedent's net estate is computed by deducting the debts, administration, and reasonable funeral expenses from the gross (total) estate of the decedent. In calculating the full value of the net estate, the following property is now included along with that which was previously mentioned in NY EPTL § 5-1.1 (b):
 - A. The transfer of property, including the relinquishment of a property interest, for the benefit of any person made after August 31, 1992 and within one year of the date of death of the decedent to the extent that the decedent was not fully compensated for the same.
 - B. Any money, securities, or other property payable under a thrift, savings, retirement, deferred compensation, pension, death benefit, stock bonus, profit-sharing plan, or account arrangement, system, or trust (with some exceptions).
 - C. Any power of appointment held by the decedent immediately before his or her death or which the decedent, within one year of his or her death, released or exercised in favor of any person other than the decedent or the estate.
 - D. United States Savings Bonds or other United States obligations.

Effects of Divorce and Marriage on a Spouse's Rights (Hower 122)

In the State of New York, the effect of a divorce on a decedent's last will and testament only revokes those provisions found in the will made to the former spouse as well as any appointments to the former spouse contained therein unless the will contains a provision expressly stating otherwise. The rest of the decedent's will remains intact. NY EPTL § 5-1.4.

In the event that an individual marries after the creation of his or her last will and testament, it will not be revoked. The surviving spouse will take his or her share of the decedent's estate as if the decedent died intestate unless a provision was made for the surviving spouse in a written antenuptial agreement. NY EPTL § 5-1.3.

Rights of Children (Issue) (Hower 125)

Adopted Children (Hower 126)

In the State of New York, adopted children take from the decedent's estate as a natural child would. NY EPTL § 4-1.1.

Nonmarital Children (Hower 127)

Under New York State law, a nonmarital child is considered to be the natural child of its mother and, therefore, entitled to take from the mother's estate. Further, a nonmarital child is considered to be the natural child of the father and therefore entitled to inherit from his estate if any of the following apply:

1. A court of competent jurisdiction has entered an Order of Filiation (paternity) against the father, or the parents have executed an acknowledgment of paternity.
2. The father has signed an instrument acknowledging paternity provided it is signed and acknowledged before a notary and in the presence of one or more witnesses and it is filed within sixty days of its making with the putative father registry, and the Department of Social Services sent written notice of the same to the mother.

3. Paternity has been established by clear and convincing evidence and the father has openly and notoriously held the child out to be his own.
4. A blood genetic marker test has been administered and determines that, with all other evidence, paternity has been established by clear and convincing evidence.

NY EPTL §§ 4-1.1 & 4-1.2.

Pretermitted (Omitted) and Posthumous Children (Hower 128)

Under New York State law, whenever a testator has a child born after the execution of his last will and testament, and is not provided for or mentioned in the same or any other settlement by the testator, that child will be entitled to receive what the other children of the testator receives. NY EPTL § 5-3.2 (a)(1). Thus, if the testator had children prior to the execution of his last will and testament and did not provide for them in the same, then the child born after the execution of the will will not receive anything from the estate. However, if the testator provided only for those children alive at the time of the execution of his will, then a child born after the execution of the same will be entitled to his intestate share of his parent's estate. NY EPTL § 5-3.2 (a)(1). On the other hand, if the testator executed his last will and testament prior to the birth of any child and did not mention or provide for the same in his will, any child born after the execution of the will will take his or her intestate share of the testator's estate. NY EPTL § 5-3.2 (a)(2).

Additional Rights or Protection for a Surviving Spouse and Children (Hower 129)

Homestead Exemption (Hower 129)

The homestead exemption in the State of New York is \$10,000.00. This exemption is for the benefit of the surviving spouse and surviving children of the decedent until the majority of the youngest surviving child or until the death of the surviving spouse, whichever is last to occur. NY CPLR § 5206.

Family or "Widow's" Allowance (Hower 131)

The State of New York provides for a family allowance under NY EPTL § 5-3.1. Under this statute, the surviving spouse has first priority in taking the personal assets of the decedent outside the probate estate. If there is not a surviving spouse, the decedent's children under the age of twenty-one will have the right to exempt the property from the estate. The exemptions cover a variety of personal property items in various categories and place a specific monetary limit on them, which may not be exceeded.

Under the first category of personal property items, the statute provides a surviving spouse (or children under the age of twenty-one) with a variety, but limited number, of items from the estate of the decedent. Such items include housekeeping utensils, musical instruments, a sewing machine, household furniture and appliances (including but not limited to computers and other electronic devices), fuel, provisions, and clothing of the decedent, all of which may not exceed an aggregate of \$10,000.00. NY EPTL § 5-3.1 (a)(1).

The second and third categories of personal property include such items as the family Bible, computer tapes, domestic animals, family pictures, tractors, and other enumerated items with specific monetary limitations placed on them as well. § 5-3.1 (a)(2)-(3).

The family allowance statute provides a fourth category in which the surviving spouse or children under the age of twenty-one are entitled to the automobile owned by the decedent not to exceed \$15,000.00 in value. In lieu of the car, the qualified individuals may elect to take the value of the same, not exceeding the \$15,000.00 limit. § 5-3.1 (a)(4).

Finally, under the last category, if the decedent did not have any personal property to speak of, the surviving spouse or children under the age of twenty-one may take cash (if available). The cash election must not exceed \$15,000.00. NY EPTL § 5-3.1 (a)(5) and § 5-3.1 (b).

5

WILLS: VALIDITY REQUIREMENTS, MODIFICATION, REVOCATION, AND CONTESTS

REQUIREMENTS FOR THE CREATION OF A VALID WILL (HOWER 142)

As stated in Chapter 1 of this supplement, New York State requires that a testator be eighteen years of age and of sound mind and memory in order to write a valid will. NY EPTL § 3-1.1. The question necessarily arises as to what “of sound mind and memory” is considered to be. If you recall, the statute does not give a definition of this term, but case law does serve as a guide.

Under New York State case law, it is well settled that “sound mind and memory” has three basic components. The testator must:

1. Understand the nature and consequences of executing a will.
2. Know the nature and extent of his or her property.
3. Know the “natural objects of his or her bounty” or his or her relatives.

In the Matter of Kumstar, 66 NY 2d 69, 487 NE 2d 271, 496 NYS 2d 414 (1985); *In Re Olga Slade*, 106 AD 2d 914, 483 NYS 2d 513 (Fourth Dept., 1984).

Along with the requirement of “sound mind and memory” the testator must prepare and execute the will in accordance with the statutory guidelines found in NY EPTL § 3-1.2. Such guidelines have also been discussed in Chapter 1 of this supplement. All wills in the State of New York must be in writing and signed at the end thereof by the testator in front of two attesting witnesses. The two witnesses then each sign their respective names and addresses in the presence of each other. At some point during this “will signing ceremony,” the testator must acknowledge to the witnesses that the document he or she is signing is, in fact, his or her last will and testament.

New York does acknowledge holographic (handwritten) wills and nuncupative (oral) wills in very limited circumstances. As was discussed in Chapter 1 of this supplement, those circumstances basically relate to servicemen and women (and to those who accompany them) during war time and mariners at sea. NY EPTL § 3-2.2.

REVOCATION AND REJECTION OF A WILL (HOWER 156)

The NY EPTL § 3-4.1 provides the procedures by which an existing will can be revoked. Along with the writing or creation of a new document, an existing will can be revoked by a physical act caused by the testator. Further, the will may be revoked by a physical act of a third party at the testator’s direction and in his or her presence and in the presence of at least two witnesses.

It is possible to probate a lost will in the State of New York. Under the NY SCPA, one may probate a lost will if he or she can prove to the court, through clear and convincing evidence, that the will was, in fact, lost and not revoked by physical act. The proponent must further prove through clear and convincing evidence that it was properly executed pursuant to statutory requirements, and that the contents of the lost will can be proved through testimony of at least two credible witnesses or a copy or draft of the same. NY SCPA § 1407.



6

PREPARATION TO DRAFT A WILL: CHECKLISTS AND THE CONFERENCE WITH THE CLIENT

The information contained in the main text is applicable to the State of New York.



FINAL DRAFT AND EXECUTION OF A VALID WILL

CONTENTS OF A STANDARD WILL (HOWER 201)

Provision for Payment of Debts and Funeral Expenses (Hower 203)

Under NY EPTL § 3-3.6, any charges, liens, or encumbrances on property owned by the decedent at the time of his or her death will be chargeable to the property itself and not to the estate unless stated otherwise in the decedent's will. Thus, each individual inheriting from the decedent's estate will pay his or her appropriate share of the total encumbrance.

ADDITIONAL NONTESTAMENTARY DOCUMENTS (HOWER 224)

Self-Proving Affidavit Clause That Creates a Self-Proved Will (Hower 224)

New York State allows the use of a self-proving affidavit clause in connection with a last will and testament. NY SCPA § 1406.

Power of Attorney (Hower 228)

The State of New York provides for only two types of powers of attorney: durable and nondurable. NY General Obligations Law § 5-1501. A *durable* power of attorney *continues* to be effective should the principal become disabled or incompetent. The *nondurable* power of attorney *ceases* to be effective should the principal become disabled or incompetent. The durable power of attorney is the more popular of the two for the mere fact that it does continue to be effective upon disability or incompetency of the principal. The statutory short form, durable power of attorney is provided below:

DURABLE GENERAL POWER OF ATTORNEY NEW YORK STATUTORY SHORT FORM

THE POWERS YOU GRANT BELOW CONTINUE TO BE EFFECTIVE SHOULD YOU BECOME DISABLED OR INCOMPETENT

CAUTION: THIS IS AN IMPORTANT DOCUMENT. IT GIVES THE PERSON WHOM YOU DESIGNATE (YOUR "AGENT") BROAD POWERS TO HANDLE YOUR PROPERTY DURING YOUR LIFETIME, WHICH MAY INCLUDE POWERS TO MORTGAGE, SELL, OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL BY YOU. THESE

POWERS WILL CONTINUE TO EXIST EVEN AFTER YOU BECOME DISABLED OR INCOMPETENT. THESE POWERS ARE EXPLAINED MORE FULLY IN NEW YORK GENERAL OBLIGATIONS LAW, ARTICLE 5, TITLE 15, SECTIONS 5-1502A THROUGH 5-1503, WHICH EXPRESSLY PERMIT THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY.

THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL OR OTHER HEALTH CARE DECISIONS. YOU MAY EXECUTE A HEALTH CARE PROXY TO DO THIS.

IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

THIS is intended to constitute a **DURABLE GENERAL POWER OF ATTORNEY** pursuant to Article 5, Title 15 of the New York General Obligations Law:

I,

(insert your name and address)

do hereby appoint:

(If one person is to be appointed agent, insert the name and address of your agent above.)

(If two or more persons are to be appointed agents by you insert their names and addresses above.)

my attorney(s)-in-fact TO ACT (If more than one agent is designated, CHOOSE ONE of the following two choices by putting your initials in ONE of the blank spaces to the left of your choice):

() Each agent may SEPARATELY act.

() All agents must act TOGETHER.

(If neither blank space is initialed, the agents will be required to act TOGETHER.)

IN MY NAME, PLACE, AND STEAD in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:

(DIRECTIONS: Initial in the blank space to the left of your choice any one or more of the following lettered subdivisions as to which you WANT to give your agent authority. If the blank space to the left of any particular lettered subdivision is NOT initialed, NO AUTHORITY WILL BE GRANTED for matters that are included in that. Alternatively, the letter corresponding to each power you wish to grant may be written or typed on the blank line in subdivision "(Q)," and you may then put your initials in the blank space to the left of subdivision "(Q)" in order to grant each of the powers so indicated.)

- () (A) Real estate transactions
- () (B) Chattel and goods transactions
- () (C) Bond, share, and commodity transactions
- () (D) Banking transactions

(continued)

- (E) Business operating transactions
- (F) Insurance transactions
- (G) Estate transactions
- (H) Claims and litigation
- (I) Personal relationships and affairs
- (J) Benefits from military service
- (K) Records, reports, and statements
- (L) Retirement benefit transactions
- (M) Making gifts to my spouse, children and more remote descendants, and parents, not to exceed in the aggregate \$10,000 to each of such persons in any year
- (N) Tax matters
- (O) All other matters
- (P) Full and unqualified authority to my attorney(s)-in-fact to delegate any or all of the foregoing powers to any person or persons whom my attorney(s)-in-fact shall select
- (Q) Each of the above matters identified by the following letters:

(Special provisions and limitations may be included in the statutory short form durable power of attorney only if they conform to the requirements of section 5-1503 of the New York General Obligations Law.)

This durable power of attorney shall not be affected by my subsequent disability or incompetence.

If every agent named above is unable or unwilling to serve, I appoint _____ (insert name and address of successor) to be my agent for all purposes hereunder.

TO INDUCE ANY THIRD PARTY TO ACT HEREUNDER, I HEREBY AGREE THAT ANY THIRD PARTY RECEIVING A DULY EXECUTED COPY OR FACSIMILE OF THIS INSTRUMENT MAY ACT HEREUNDER, AND THAT REVOCATION OR TERMINATION HEREOF SHALL BE INEFFECTIVE AS TO SUCH THIRD PARTY UNLESS AND UNTIL ACTUAL NOTICE OR KNOWLEDGE OF SUCH REVOCATION OR TERMINATION SHALL HAVE BEEN RECEIVED BY SUCH THIRD PARTY, AND I FOR MYSELF AND FOR MY HEIRS, EXECUTORS, LEGAL REPRESENTATIVES AND ASSIGNS, HEREBY AGREE TO INDEMNIFY AND HOLD HARMLESS ANY SUCH THIRD PARTY FROM AND AGAINST ANY AND ALL CLAIMS THAT MAY ARISE AGAINST SUCH THIRD PARTY BY REASON OF SUCH THIRD PARTY HAVING RELIED ON THE PROVISIONS OF THIS INSTRUMENT.

THIS DURABLE GENERAL POWER OF ATTORNEY MAY BE REVOKED BY ME AT ANY TIME.

In Witness Whereof I have hereunto signed my name this ____ day of _____, 20____.

 (Signature of Principal)

(ACKNOWLEDGEMENT)

Living Will: Death with Dignity (Hower 229)

As previously mentioned, New York State, through case law, recognizes living wills. *Matter of O'Connor*, 72 NY 2d 517, 531 NE 2d 607, 534 NYS 2d 886 (1988). For a more detailed discussion regarding the same, please refer to Chapter 4 of this supplement.

New York also recognizes health care proxies allowing a principal to appoint an agent who can make health care decisions for him or her in the event that he or she becomes incompetent and can no longer do so himself or herself. NY Public Health Law § 2981. According to the statute, any competent adult may sign and date a written health care proxy in the presence of two witnesses who shall also sign their names at the end thereof. Public Health Law §§ 2981 (1) and (2).

8

INTRODUCTION TO TRUSTS

THE ESSENTIAL ELEMENTS OF A TRUST (HOWER 250)

The Trustee: The Fiduciary and Administrator of the Trust (Hower 253)

Powers of the Trustee (Hower 256)

In the State of New York, the powers of the trustee are enumerated in § 11-1.1 and § 11-2.2 of the NY EPTL and are similar to those listed in the main text.

Duties of the Trustee (Hower 257)

Along with the trustee's general duties listed in the main text, New York has adopted the Prudent Investor Act. NY EPTL § 11-2.3. Under this act, the trustee is obligated to "exercise reasonable care, skill, and caution" in making investment decisions on behalf of the trust. NY EPTL § 11-2.3 (b)(2). The "exercise of reasonable care, skill, and caution" will be defined in light of the circumstances at the time the decision was made or action was taken by the trustee. NY EPTL § 11-2.3 (b)(1). Further, it is important to note that those trustees with specialized skill in the investment arena will be held to a higher standard of care than those who do not. NY EPTL § 11-2.3 (b)(5).



9

CLASSIFICATION OF TRUSTS, THE LIVING TRUST, AND OTHER SPECIAL TRUSTS

The information contained in the main text is applicable to the State of New York.

10

ESTATE PLANNING AND LONG-TERM CARE

THE ESTATE PLAN (HOWER 318)

State Death Taxes (Hower 320)

New York State has undergone sweeping estate tax changes over the recent years. Prior to October 1, 1998, New York had the highest estate tax rate in the nation—21%—causing an additional 5% to be levied on New York estates after the federal credit of 16%. However, starting in October of 1998, New York began to reduce its high tax rate until it eventually met the Federal credit of 16%. Therefore, the estate tax rate in the State of New York is now only 16%, effectively making it a “sop” tax. NY Tax Law § 952(a). Thus, New York estates will pay a maximum of 55% in estate taxes under the new tax law as opposed to 60% under the old tax law.

Further, along with reducing the estate tax rate, New York also increased its general deduction on estate taxes from \$115,000.00 to \$675,000.00, which equals the maximum federal estate tax deduction. The State’s general estate deduction will continue to be tied to the maximum Federal deduction up to \$1 million dollars; that is, when the federal general estate deduction is increased, the state’s estate deduction will also rise to a one-million dollar cap. NY Tax Law § 951(a).

Finally, the state gift tax was repealed in its entirety on January 1, 2000. By doing so, New York was removed from a small minority of states that still impose a tax on gifts. It is important to note, however, that there continues to remain a federal gift tax.

11

PERSONAL REPRESENTATIVES: TYPES, PRE-PROBATE DUTIES, AND APPOINTMENT

TYPES OF PERSONAL REPRESENTATIVES (HOWER 360)

In the State of New York, letters of administration (when a decedent dies intestate) are granted to those individuals who are distributees of an intestate and eligible to qualify (see Chapter 1 of this supplement for qualification guidelines) in the following order:

1. Surviving spouse
2. The children
3. The grandchildren
4. The father or the mother
5. The brothers or the sisters
6. Any other persons who are distributees and are eligible to qualify with preference given to the person entitled to the largest share of the estate, except
 - a. The court may grant letters to more than one person if more than one distributee equally qualifies; and
 - b. If the distributees are the issue of grandparents on only one side of the decedent's family tree and are individuals other than the aunts and uncles of the decedent, the letters shall be issued to the public administrator or the chief financial officer of the county

NY SCPA § 1001.

12

PROBATE AND ESTATE ADMINISTRATION

PROBATE OR ESTATE ADMINISTRATION (HOWER 396)

At the outset of this chapter, it is important to note that all forms for small estate administrations, Probate, or Administrations are prepared by the Surrogate's Court of each county and are based on the appropriate statutory law. While all may be similar in appearance, each may have its own peculiarities, and each Court will only accept its own standard forms. Thus, one must obtain the appropriate forms from the particular county in which an estate is to be probated before commencing the same.

Small Estate Settlement and Administration (Hower 398)

New York State provides for a small estate administration (also known as a voluntary administration) under Article 13 of the SCPA. It allows an estate to be probated in a swift manner without the formalities or costs associated with a full probate proceeding reserved for large estates.

A small estate administration is appropriate when a decedent dies with personal property having a gross value of \$20,00.00 or less, exclusive of that property allowed for a family allowance under EPTL 5-3.1 (as discussed in Chapter 4 of this supplement). NY SCPA § 1301. It is important to note that real property is not included in the computation of the gross value of the estate for a small estate administration. NY SCPA § 1302.

The person who is appointed to administer the small estate is known as a "voluntary administrator" and is either the person nominated in the decedent's last will and testament or designated via statutory law if the individual dies intestate. NY SCPA § 1303. The priority for those individuals to be appointed a voluntary administrator if the decedent died intestate is as follows:

1. Surviving adult spouse
2. Adult child or grandchild
3. Parent
4. Brother or sister
5. Niece or nephew or aunt or uncle
6. Guardian of the property of an infant or committee of an incompetent or conservator of property of a conservatee (all of whom must be distributees)
7. Chief fiscal officer or public administrator of the county

NY SCPA § 1303.

In order to commence a small estate proceeding, the voluntary administrator must file an "Affidavit in Relation to Settlement Under Article 13 of the SCPA," a certified copy of the death certificate, and will (if there is one) with the Surrogate's Court clerk along with a \$1.00 filing fee. Immediately upon filing the same, the voluntary administrator will be appointed and the clerk of court will provide him or her with a certified copy of the affidavit. This affidavit will be his or her evidence to act on behalf of the decedent's estate. The clerk of court will then mail to each distrib-

utee who has not renounced his or her right to act as a voluntary administrator and to each beneficiary mentioned in the affidavit, other than the affiant, a notice of the proceeding. NY SCPA § 1304. The voluntary administrator will then commence to pay the debts and distribute the assets of the decedent. Finally, upon completion of the distribution of the decedent's assets, the voluntary administrator must file a statement of all assets collected and of all payments and distributions made by him or her, as well as receipts or cancelled checks evidencing such payments and distributions with the clerk of the court. NY SCPA § 1307 (2).

A copy of the forms appropriate for a small estate administration are found in Appendix A.

FORMS OF PROBATE OR ESTATE ADMINISTRATION (HOWER 403)

A. Probate Proceedings

When an individual dies testate (with a will) and the personal property in his or her estate is valued at an amount over \$20,000.00, a probate proceeding must be commenced. A probate proceeding in New York is a formal process by which the assets of the decedent are collected and distributed to the appropriate parties pursuant to Article 14 of the SCPA.

In order to fully probate a will, the following must be submitted to the Surrogate's Court:

1. Certified Copy of the Death Certificate
2. Probate Petition
3. Citation and Affidavit of Service
4. Waiver and Consent
5. Notice of Probate
6. Affidavit Proving Correct Copy of the Will (With Original Will Attached)
7. Deposition or Affidavit of Subscribing Witnesses
8. Decree Granting Probate and Letters Testamentary

Certified Copy of the Death Certificate

In order to probate the decedent's estate, one must provide a certified copy of the death certificate. This can be obtained through the funeral director or through the appropriate government agency.

Probate Petition

Under § 1402, the following individuals may petition the Surrogate's Court to probate the decedent's last will and testament:

1. Any person designated in the will as a legatee, devisee, fiduciary, or guardian
2. The guardian of an infant legatee or devisee
3. The committee of an incompetent legatee or devisee
4. The conservator of a legatee or devisee
5. A creditor
6. Any person who would be entitled to letters of administration with the will annexed
7. Any party to an action to which the decedent, if living, would be a party
8. The public administrator or county treasurer on order of the Court

Upon first glance the petition for probate looks quite complicated and onerous. However, after careful review of the same, one will find the petition to be fairly simple to complete.

ATTORNEY

Signature: _____
Print Name: _____
Firm Name: _____
Address: _____

Tel. No.: _____

Filing fee paid \$
____ certificates paid \$
____ trustee certs. paid \$
____ prelim. certs. paid \$

Citation Returnable:

SURROGATE'S COURT OF THE STATE OF NEW YORK - ONTARIO COUNTY
PROBATE PROCEEDING, Will of

PETITION FOR PROBATE and
 Letters Testamentary
 Letters of Trusteeship
 Letters of Administration c.t.a.
 Preliminary Letters Testamentary

Deceased

FILE NUMBER

To the Surrogate's Court of Ontario County, it is respectfully alleged:

1(a). The name, citizenship, domicile (or, in the case of a bank or trust company, its principal office) and interest in this proceeding of each petitioner are as follows: [See Instructions, Item 2]

Name: _____ Citizenship: USA Other: [Specify]
Domicile or Principal Office:

(Street address) (City, Town or Village) (County) (State) (Zip) (Telephone Number)
Mailing address, if different from domicile, is:

Name: _____ Citizenship: USA Other:
Domicile or Principal Office:

(Street address) (City, Town or Village) (County) (State) (Zip) (Telephone Number)
Mailing address, if different from domicile, is:

Interest(s) of Petitioner(s): [check one] Nominated Executor named in decedent's Will
 Proposed Administrator CTA Other: [specify]

1(b). The proposed executor is is not an attorney. [An attorney must comply with SCPA 2307-a, see Instructions Item 2b.]

2. The name, domicile, date and place of death, and citizenship of the decedent are as follows: [See Instructions, Item 3.]

Name: [Name must be the same as the signature on the will.]
a/k/a [if required]:
Domicile:

(Street address) (City, Town or Village) (County) (State) (Zip)

Date of death: _____ Place of Death: _____

Citizenship [Check one]: USA Other [Specify]

3(a). To the best of the knowledge of the undersigned, the approximate total value of all property constituting the decedent's gross **testamentary** estate is greater than \$ _____ but less than \$ _____, and consists of the following: [See Item 4]

Personal property \$
Improved real property in New York State \$
Unimproved real property in New York State (vacant land) \$
Estimated gross rents for a period of 18 months \$

3(b). No other testamentary assets exist in New York State nor does any cause of action exist on behalf of the estate, except as follows: [See Item 4c and enter "none" or specify in Schedule L and attach it to the petition.]

4. The Last Will, presented herewith, relates to both real and personal property and consists of an instrument or instruments dated as shown below and signed at the end thereof by the decedent and the following attesting witnesses:

Date of will:

All Witnesses to will:

Date of codicil:

All witnesses to codicil:

5. No other will or codicil of the decedent is on file in this Surrogate's Court, and upon information and belief, after a diligent search and inquiry, including (where appropriate) a search of any safe deposit box, there exists no will, codicil or other testamentary instrument of the decedent that is later in date to any of the instruments mentioned in paragraph 4, except as follows: *[Enter "none" or specify]*

6. The decedent was survived by distributees classified as follows:

[Before completing, read Instructions, Item 5]

	Yes/No/NA	Number of
	[]	Survivors
(a) Spouse (husband / wife) If "No", was decedent divorced? <i>[See Item 5b]</i>	[]	[]
(b)(1) Marital and/or adopted children <i>[See Item 5c]</i> Issue of predeceased marital and/or adopted children	[]	[]
(b)(2) Issue of the decedent adopted by persons related to the decedent or the spouse of a former spouse <i>[See Item 5d]</i>	[]	[]
(b)(3) Nonmarital children of a male decedent <i>[See Item 5c]</i> Issue of predeceased nonmarital children	[]	[]

[You must insert the answer "Yes" or "No" for all of the above bracketed categories.]

(c) Mother / Father	[]	[]
(d) Sisters and/or brothers, either of the whole or half blood Issue of predeceased sisters and/or brothers (nieces and nephews)	[]	[]
(e) Grandparents (maternal and paternal)	[]	[]
(f) Aunts and/or uncles (maternal and paternal) Children of predeceased aunts and/or uncles (first cousins)	[]	[]
(g) First cousins once removed (children of predeceased first cousins)	[]	[]

7. The names, relationships, domiciles and addresses of (a) all distributees (under EPTL 4-1.1 and 4-1.2) indicated in paragraph 6, (b) each person designated in the will presented herewith as primary executor, (c) all persons adversely affected by the purported exercise by such will of any power of appointment, (d) all persons adversely affected by any codicil or other instrument offered for probate that is later in date of execution than the will presented herewith and (e) all persons having an interest under any other will of the decedent on file in the Surrogate's court whose rights or interests are adversely affected by the will presented herewith, are hereinafter set forth in subdivisions (a) and (b). *[See Instructions, Item 6]*

If the propounded will purports to revoke or modify an inter vivos trust or any other testamentary substitute, list the names, relationships, domiciles and addresses of the trustee and beneficiaries affected by the will in subparagraphs (a) and (b) below. *If applicable, attach a copy of the trust agreement*

(a) All persons and parties so interested who are of **full age and sound mind** or which are corporations or associations, are as follows:

Name and Relationship	Domicile and Mailing Address	Description of Legacy, Devise, Other Interest, or Nature of Fiduciary Status
-----------------------	------------------------------	--

(b) All persons so interested who are **infants and/or persons under disability**, are as follows:
 [See *Instructions, Item 6 and attach Schedule A, B, C and/or D*]

Name and Relationship	Domicile and Mailing Address	Description of Legacy, Devise, Other Interest, or Nature of Fiduciary Status
-----------------------	------------------------------	--

8. The names, domiciliary addresses and interests of all substitute or successor executors and of all trustees, guardians, legatees and devisees, and other beneficiaries named in the propounded will, and/or trustees and beneficiaries of any inter vivos trust designated in the propounded will, **other than those named in paragraph 7**, are set forth in subparagraphs (a) and (b) below: [See *Instructions, Item 7*]

(a) All such fiduciaries, legatees, devisees and other beneficiaries who are of **full age and sound mind** or which are corporations or associations are as follows:

Name	Domicile and Mailing Address	Description of Legacy, Devise, Other Interest, or Nature of Fiduciary Status
------	------------------------------	--

(b) All such fiduciaries, legatees, devisees and other beneficiaries who are **infants and/or persons under disability** are as follows: [See Item 7 and attach applicable Schedule C or D]

Name	Domicile and Mailing Address	Description of Legacy, Devise, Other Interest, or Nature of Fiduciary Status
------	------------------------------	--

(c) [If the decedent is survived by a spouse and a parent or parents, but no issue, and a claim for wrongful death exists, check here [] and furnish the names and addresses of the parents below. See Instructions, Item 7b]

9(a). No beneficiary under the propounded will, listed in paragraph 7 or 8 above, had a confidential relationship to the decedent such as attorney, accountant, doctor, clergyperson, except:
 [Enter "none" or indicate the nature of the confidential relationship for each. See Item 7c]

9(b). No persons, corporations or associations are interested in this proceeding other than those mentioned above.
 [See Item 8]

10. Upon information and belief, no other petition for the probate of any will of the decedent or for letters of administration or affidavit of voluntary administration of the decedent's estate has heretofore been filed in any court, except: [Enter "none" or specify. See Item 8]

WHEREFORE each petitioner prays that: [See Instructions, Item 9]

- (a) process be issued to all necessary parties to show cause why the Will and Codicil(s) set forth in paragraph 4 and presented herewith should not be admitted to probate;
- (b) an order be granted directing the service of process pursuant to the provisions of Article 3 of the SCPA upon the persons named in paragraph 7 hereof whose names or whereabouts are unknown and cannot, after due diligence, be ascertained, or who may be persons on whom service by personal delivery cannot be made;
- (c) such Will and Codicil(s) be admitted to probate as a will of real and personal property;
- (d) letters issue thereon as follows: [Check and complete all relief requested]

- [] Letters Testamentary to : |
- [] Letters of Trusteeship to
 of the following trusts:[See Item 9b]
- [] Letters of Administration c.t.a. to
- [] Preliminary Letters Testamentary to
 [Submit Schedule E]
- [] limitations be imposed as follows: [See Item 9c]

(e) and that the petitioner(s) have such other and further relief as may be proper.

Dated: _____, 2001

[Each petitioner must sign both the **petition** and the **verification** before a notary or other such official]

COMBINED VERIFICATION, OATH AND DESIGNATION
[For use when the petitioner is an individual]

STATE OF NEW YORK }
COUNTY OF ONTARIO } ss.

The undersigned, a petitioner named in the foregoing petition, being duly sworn, says: [See Item 10]

(1) VERIFICATION: I have read the foregoing petition subscribed by me (including all annexed Schedules), I know the contents thereof, the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

(2) OATH OF [] EXECUTOR [] ADMINISTRATOR c.t.a. [] TRUSTEE [] PRELIMINARY EXECUTOR as indicated above: I am over eighteen years of age and a citizen of the United States; and I will well, faithfully and honestly discharge the duties of fiduciary of the goods, chattels and credits of the decedent according to law. I am not ineligible to receive letters and will duly account for all moneys and other property that will come into my hands.

(3) DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I designate the Chief Clerk of the Ontario County Surrogate's Court (or the Chief Clerk's successor) as a person on whom service of any process issuing from such court may be made, in like manner and with like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York, after due diligence used.

My domicile is:

My domicile is:

Street address:

Street address:

City/Town/Village:

City/Town/Village:

State: Zip:

State: New York Zip:

(Signature)

(Signature)

(Print Name)

(Print Name)

On _____, 2001 before me personally came _____ to me known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he executed the same.

(Notary Public)

My commission expires on:

Caption

The petition's caption informs the court and all interested parties as to the venue, the decedent, and the relief requested. The top left section of the caption sets forth the exact jurisdictional venue of the court (the county must be filled in by the petitioner).

The top right hand corner of the caption is for the court's notations. It will mark the total filing fee paid as well as the number and price of certificates ordered. Finally, if the personal representative is required to post a bond, the court will also note this on the petition.

The center left hand portion of the caption requires that the decedent's name and all aliases used be listed. It is necessary for each alias used by the decedent to be listed to provide adequate notice to all interested parties of the death of the decedent.

The right center portion of the caption notifies the court of the relief requested. The first part of the section "Petition for Probate" asks that the decedent's estate be probated. The second part of this section asks that a personal representative be appointed. The section "Letters Testamentary" will be checked when the decedent dies testate and nominates a personal representative in his or her will. The section "Letters Trusteeship" will be checked when a trust is involved in the estate, and the section "Letters of Administration c.t.a." will be checked when the decedent dies testate but the court is required to nominate the personal representative for some reason (i.e., the decedent failed to nominate one in his or her will or the nominated personal representative failed to qualify).

The salutation is nothing more than a courtesy to the court.

Sections 1 through 3

Sections 1 through 3 line up the preliminary information for the court in order to proceed with the petition.

Section 1a requires that the petitioner list the name, address, mailing address (if necessary), and citizenship of each petitioner. The petition provides space to list two petitioners if you have them. Generally only one petitioner files and that person is usually the personal representative. Further, section 1a asks you to describe the petitioner's interest in the probate of the decedent's estate.

Section 1b inquires as to whether the proposed executor is an attorney. This is in compliance with section 2307-a of the SCPA in which attorneys who are nominated as executors are required to provide a written "acknowledgment of disclosure" signed by the testator. Such acknowledgment must state, among other things, that the testator is aware that the proposed executor is an attorney and that he or she will be entitled to the statutory commissions provided to personal representatives in the handling of estates.

Sections 2 and 3

Sections 2 and 3 are self-explanatory although it is important to point out that section 2 sets forth the court's jurisdictional basis as well as venue in probating the decedent's estate by requiring that the decedent's domicile be listed. Section 3 is interested in the date of the last will and testament being offered for probate.

Section 4

Section 4 inquires as to whether any other will or codicil dated *after* those mentioned in section 3 exists anywhere. If there is no other will or codicil, it is important that you state "NONE" at the end of this paragraph. If there are any wills and/or codicils dated later than those listed in paragraph 3, be certain to give a clear description and location of each. Further, make sure you consult with your supervising attorney in the event you encounter such a situation.

Section 5

The purpose of this section is to identify those individuals who would take the decedent's estate if there was not a will and notify them of the proceedings accordingly. The petitioner is required to list all possible intestate heirs of the decedent as defined in EPTL §§ 4-1.1 and 4-1.2 (this was discussed in Chapter 4 of this supplement). As the petitioner goes through the list, he or she must mark the box immediately to the left of each item with either a "no," the number of survivors for the item,

or an “x.” One would use an “x” if it is unnecessary to list the survivors due to the fact that there is another “higher ranking” distributee.

For example, if the decedent died with only three (3) children and two brothers as survivors, section 5 of the probate petition would be completed as follows:

- a. [No] Spouse (husband/wife).
- b. [3] Child or children and/or issue of predeceased child or children.
- c. [X] Mother/Father.
- d. [X] Sisters and/or brothers, either of the whole or half blood, and issue of predeceased sisters and/or brothers (nieces/nephews, etc.).
- e. [X] Grandparents [Include maternal and paternal].
- f. [X] Aunts and/or uncles, and children of predeceased aunts and/or uncles (first cousins).
- g. [X] First cousins once removed (children of predeceased first cousins).

Based on EPTL § 4-1.1(3), if the decedent is survived by issue and no spouse, the entire estate will be left to the issue. As a result, it is unnecessary to list the decedent’s brothers. Please note that if the decedent was divorced, a copy of the divorce decree must be attached to the petition.

Section 6

All persons listed in section 6 will be entitled to receive a *citation* (discussed later in this chapter) which notifies them of the petition for probate of the decedent’s will and gives them a date and time to raise objections to the same. These individuals include each nominated primary executor, anyone who would take from the decedent’s estate under the laws of intestacy, and anyone else who would be adversely affected by the probate of decedent’s will (for example, someone named in an earlier will). Any individual who is under a disability, such as a minor or incompetent, must be separately listed in section 6b.

Section 7

Section 7 requires the names, addresses, and interests of all individuals to whom a *notice of probate* (to be discussed later in this chapter) will be mailed. These individuals would include beneficiaries under the will who are not distributees (they will receive a citation), substitute or successor executors, and all trustees and guardians named under the will. As in section 6, section 7 is divided between those who are not under a disability (section 7a) and those who are (section 7b).

Section 8

The purpose of this section is to identify any undue influence on the decedent by a distributee or beneficiary, and also includes dentists, nurses, and the like. If there was no confidential relationship between the decedent and any person listed in sections 6 and 7, the petitioner must be sure to clearly write “NONE.”

Section 9

This section of the petition for probate is to determine an approximate monetary size of the decedent’s probate estate. Surrogate’s Court can then determine the filing fee for the petition as follows:

- Estates up to \$10,000.00 = \$35.00 filing fee
- Estates from \$10,000.00 to \$20,000.00 = \$60.00 filing fee
- Estates from \$20,000.00 to \$50,000.00 = \$170.00 filing fee
- Estates from \$50,000.00 to \$100,000.00 = \$225.00 filing fee
- Estates from \$100,000.00 to \$250,000.00 = \$335.00 filing fee
- Estates from \$250,000.00 to \$500,000.00 = \$500.00 filing fee
- Estates valued at more than \$500,000.00 = \$1,000.00 filing fee

Section 10

Section 10 of the probate petition assures the court that it is the only court to hear this matter.

Wherefore Clause and Signatures

The “wherefore” clause, as in any other petition, indicates what the petitioner is seeking. In this case, the petitioner is seeking to admit the decedent’s will into probate and to have Letters issued. After the wherefore clause, the petitioner signs and dates the petition.

Every probate petition filed in Surrogate’s Court must also be verified. Further, each proposed executor must sign an “oath and designation” if an individual or “consent to act and designation” if a corporation.

Citation and Affidavit of Service

As stated earlier, the citation is sent to the intestate distributees, the nominated executor, and anyone else who is adversely affected by the propounded will. It notifies each that the Surrogate’s Court will hear any objections to the probate of the will on a specified date and time. An affidavit of service of Citation must be filed with the Surrogate Court clerk’s office on or before the date in which the Court is to hear objections regarding the decedent’s last will and testament.

Waiver and Consent

Any individual who is not under a disability (as listed in section 6b in the petition) may execute a Waiver of Process and Consent to probate form. This form indicates that the named individual waives issuance and service of process of the citation and consents to the probate of the will. This waiver should be filed in Surrogate’s Court on or before the return date of the citation. If all individuals under section 6 sign a waiver and consent form, then the Surrogate’s Court need not issue any citations.

Notice of Probate

After the petition for probate is filed, but prior to the issuance of Letters, the petitioner must mail a notice of probate to all persons listed in section 7 of the petition informing them of their respective interests in the decedent’s will. The petitioner is further required to file an affidavit of mailing with the Surrogate’s Court regarding the same.

Affidavit Proving Correct Copy of Will

The affidavit proving correct copy of the will is actually an affidavit literally stamped on a copy of the decedent’s last will and testament which verifies that the copy is a true and correct replication of the original. The affidavit is then signed by the attorney handling the estate.

Deposition or Affidavit of Subscribing Witnesses

Along with the petition, the petitioner must file proof with the court that the attesting witnesses did, in fact, watch the decedent sign his or her will according to statutory requirements and that the decedent was aware of the consequences of his or her actions. It is important to note that this form will not be necessary if the decedent had a self-proving will.

Decree Granting Probate And Letters Testamentary

If the Surrogate’s Court is convinced that the propounded will is, in fact, genuine and there were no irregularities as to its execution, the court will issue a decree granting probate and Letters testamentary. At this point, the executor takes his or her official position in the probate of the estate and will administer it in accordance with the terms of the will.

B. Estate Administration

The forms for Estate Administration are similar to those used in in Probate Administration. A sample of the forms is found in Appendix B.

SURROGATE'S COURT OF THE STATE OF NEW YORK - ONTARIO COUNTY

The People of the State of New York, by the Grace of God Free and Independent, To:

[insert name 1]

[insert name 2 or blank]

[insert name 3 or blank]

A petition having been duly filed by [names]
who are domiciled at [address],

YOU ARE HEREBY CITED TO SHOW CAUSE before the Surrogate's Court, in Ontario County,
at the **Courthouse**, 27 North Main Street, in the **City of Canandaigua, New York**
on _____, 2001, at _____ o'clock in the forenoon of that day why a
decree should not be made in the estate of [decedent name] , lately domiciled at
[decedent address], Ontario County, New York,

(1) admitting to probate a Will of the above named decedent dated _____, (and one or more
codicils dated N/A), a copy of each of which is attached, as the will of the above named decedent, relating to real
and personal property; and

(2) directing that

[] Letters Testamentary issue to:

[] Letters of Trusteeship issue to:

[] Letters of Administration CTA issue to:

[Specify any further relief requested]

Dated, attested and sealed on _____, 2001

Hon. Frederic T. Henry, Jr., Surrogate

by _____
Donna J. Crudele, Chief Clerk

Attorney for petitioner:

Name: _____ Tel. No. _____

Address: _____

Note: This citation is served upon you as required by law. You are not required to appear. If you fail to appear or file written objections, it will be assumed that you do not object to the relief requested. You have a right to have an attorney-at-law appear for you.

EXHIBIT 2 Probate Citation

SURROGATE'S COURT OF THE STATE OF NEW YORK - ONTARIO COUNTY

IN THE MATTER OF THE ESTATE OF

AFFIDAVIT OF SERVICE OF
CITATION

DECEASED

FILE NUMBER _____

STATE OF NEW YORK }
COUNTY OF ONTARIO } ss.:

_____, being duly sworn, deposes and says:

I am over eighteen years of age and reside at _____;

I made personal service of the citation in this proceeding, dated _____, 200__, on each person named below, each of whom I knew to be the person mentioned and described in the citation, by delivering to and leaving with each of them personally a true copy of the citation; I also delivered to each person named below the following documents: *[specify by checking boxes]*

- a true copy of the will (and each codicil) specified in the citation for probate
- a copy of *[specify]* the verified account the summary statement of account in the accounting proceeding

NAME / DATE & PLACE OF SERVICE	SEX	SKIN COLOR	HAIR COLOR	EST. AGE	WEIGHT	HEIGHT
_____	_____	_____	_____	___ Yrs.	___ Lbs.	___' ___"
at ___ M. on _____, 200__ at _____						
_____	_____	_____	_____	___ Yrs.	___ Lbs.	___' ___"
at ___ M. on _____, 200__ at _____						
_____	_____	_____	_____	___ Yrs.	___ Lbs.	___' ___"
at ___ M. on _____, 200__ at _____						
_____	_____	_____	_____	___ Yrs.	___ Lbs.	___' ___"
at ___ M. on _____, 200__ at _____						

None of the persons named above is in the military service as defined by the Act of Congress known as the "Soldiers' and Sailors' Civil Relief Act of 1940" and in the New York "Soldiers' and Sailors' Civil Relief Law.

Sworn to before me on

_____, 200__

Signature of Affiant

Notary Public

My commission expires:
(Affix notary stamp or seal)

Print Name

Name of Attorney:

Tel. No.

Address:

[NOTE: File proof of service at least two days before the return date. See Rule 207.7(c). State clearly the name of the person served and the date, time and place of service.]

FORM 5441 (8/98)

SURROGATE'S COURT OF THE STATE OF NEW YORK - ONTARIO COUNTY
PROBATE PROCEEDING, Will of

WAIVER OF PROCESS
CONSENT TO PROBATE

a/k/a

Deceased

FILE NUMBER

The undersigned, [] a person of full age, sound mind, residing at the address written below
[] a corporation having its principal office at the address written below, and interested in this
proceeding as set forth in Paragraphs 7(a) or 8(a) of the petition, hereby waives the issuance and
service of a citation in this matter and consents that the court admit to probate the decedent's last
will and testament dated [] (and codicils, if any, dated [], a copy of
each of which testamentary instrument has been received by me, and consents that

[] Letters Testamentary issue to:

[] Letters of Trusteeship issue to:
of the following trusts:

[If any trustee is not a banking corporation and the will does not dispense with a trustee's bond, check box] [] The undersigned consents
that the trustee(s) serve without bond and, if a bond is furnished, the undersigned hereby waives and
releases all right to make any claim on the bond in any capacity whatsoever.

Relationship

Street Address

City/Town, State, Zip

Date:

, 2001

Signature

STATE OF NEW YORK}

COUNTY OF } ss:

Print Name

On , 2001, before me personally appeared

[for individual] to me known and known to me to be the person described in and who executed the
foregoing waiver and consent, and duly acknowledged the execution thereof.

(Notary Public)

[Affix Notary Stamp or Seal]

My commission expires:

Name of Attorney:

Tel.No.:

Address of Attorney:

FORM 4123 (9/96)

[For RENUNCIATION OF THE RIGHT TO BE A FIDUCIARY use FORM 4124]

SURROGATE'S COURT OF THE STATE OF NEW YORK - ONTARIO COUNTY
PROBATE PROCEEDING, WILL OF

NOTICE OF PROBATE
(SCPA § 1409)

Deceased _____

FILE NUMBER _____

Notice is hereby given that:

(1) The will dated _____ (and codicil dated _____, of the above named decedent, domiciled at _____, _____ County, New York has been / will be offered for probate in the Surrogate's Court of Ontario County, New York.

(2) The proponent(s) of the will (and codicil) is/are _____ whose addresses are _____.

(3) The name and post office address of each person or organization named or referred to in the petition who has not been served or has not appeared, or waived service of process, with a statement whether such person is named or referred to in the will as legatee, devisee, trustee, guardian or substitute or successor executor, trustee, guardian, and as to any such person who is an infant or an incompetent, the name and post office address of a person upon whom personal service of process may be made on behalf of such infant or incompetent is as follows:

<u>Name</u>	<u>Post Office Address</u>	<u>Nature of Interest or Status</u>
-------------	----------------------------	-------------------------------------

Dated: _____, 2001

Attorney for Petitioner

Name of Attorney or Proponent

Name: _____ Tel. No.: _____
Address: _____

[Complete Affidavit of Mailing. If serving an infant 14 years of age or older, list and mail to infant **and** parent or guardian.]

FORM 4151 (3/98)

SURROGATE'S COURT OF THE STATE OF NEW YORK - ONTARIO COUNTY

PROBATE PROCEEDING, WILL OF

AFFIDAVIT OF MAILING
NOTICE OF PROBATE

Deceased _____

FILE NUMBER _____

STATE OF NEW YORK }
COUNTY OF ONTARIO } ss.:

_____, being duly sworn, deposes and says:

Deponent resides at _____ and is over the age of eighteen years.

On _____, 2000, deponent deposited in the post office or in a post office box regularly maintained by the government of the United States in the _____ of _____, State of New York, a copy of the foregoing Notice of Probate, contained in a securely closed postpaid wrapper, directed to each of the persons named in the notice at the places set opposite their respective names.

Sworn to before me on

_____, 2001

Signature

Notary Public

Print Name

My commission expires:

[Affix stamp or seal]

Attorney for Petitioner

Name:

Tel. No.:

Address:

4152 (3/98)

SURROGATE'S COURT OF THE STATE OF NEW YORK - ONTARIO COUNTY

PROBATE PROCEEDING, Will of

AFFIDAVIT OF ATTESTING WITNESS
(AFTER DEATH)
Pursuant to SCPA § 1406

Deceased

FILE NUMBER

STATE OF NEW YORK }
COUNTY OF ONTARIO } ss:

The undersigned attesting witness being duly sworn, deposes and says:

- (1) I have been shown [check one]
 - [] the original instrument dated
 - [] a **court-certified** photographic reproduction of the original instrument dated _____ purporting to be the last Will and Testament of the above-named decedent.
- (2) On the date indicated in such instrument, I saw the decedent subscribe the same at the place where the decedent's signature appears and I heard the decedent declare such instrument to be his last Will and Testament .
- (3) I thereafter signed my name to such instrument as a witness thereto at the request of the decedent and in the presence of the decedent, and I saw the other witness, _____, sign her name at the end of such instrument as a witness thereto.
- (4) At the time the decedent subscribed and executed such instrument the decedent was to the best of my knowledge and belief upwards of 18 years of age, and in all respects appeared to be of sound and disposing mind, memory and understanding, competent to make a Will, and not under any restraint.
- (5) The decedent could read, write and converse in the English language, and was not suffering from defects of sight, hearing or speech or any other physical or mental impairment, that would affect her capacity to make a valid Will. The purported instrument was the only copy of the Will executed on that occasion and was not executed in counterparts.
- (6) I am making this affidavit at the request of Martin E. Muehe.

Signature of Witness

Print Name

Street Address

City/Town State Zip

Sworn to before me
on _____, 2001

Notary Public

My commission expires on:
[AFFIX NOTARY STAMP OR SEAL]

[EACH WITNESS MUST BE SHOWN EITHER THE ORIGINAL WILL OR A COURT-CERTIFIED REPRODUCTION THEREOF.
THE NOTARY PUBLIC SUBSCRIBING TO THIS AFFIDAVIT MAY NOT BE A PARTY OR A WITNESS TO THE WILL /CODICIL.]

4142 (3/98)

SURROGATE'S COURT OF THE STATE OF NEW YORK - ONTARIO COUNTY
PROBATE PROCEEDING, WILL OF

DECREE GRANTING
PROBATE

Deceased

FILE NUMBER _____

A petition having been filed by _____
praying for a decree admitting to probate a written instrument or instruments dated _____
_____ propounded as the last will and testament of the above named decedent;
and satisfactory proof having been made that all necessary parties required to be cited have been duly
cited to show cause why the relief prayed for in the petition should not be granted or have duly waived
the issuance of such citation and have consented to such relief; and it appearing that notice of probate
has been given to all persons entitled to such notice; and proofs having been duly filed on behalf of the
attesting witnesses to the foregoing testamentary instruments, it appearing by such proofs that the same
was/were duly executed and is/are genuine and valid and that the decedent at the time of executing the
same was in all respects competent to make a will (and codicil) and not under restraint; and _____
_____ having appeared in opposition to the relief prayed for and the guardian ad
litem having appeared and filed a recommendation in support of the probate; now, upon motion of

it is

ORDERED AND DECREED that the last will and testament of the above named decedent be and the
same is hereby admitted to probate, valid to pass real and personal property, that letters be issued as
follows:

[] testamentary to

the executor

[] of administration CTA to

[] of trusteeship to

upon properly qualifying for such office; and that if preliminary letters testamentary were issued, the
same are hereby revoked; and it is further

ORDERED AND DECREED that the authority of the fiduciary or fiduciaries be restricted in
accordance with, and that the letters that are issued hereunder contain, the limitations, if any, as follows:

[] No limitations are imposed

[] The following limitations are imposed: [See instructions, page 8]

Dated: _____, 2001

Surrogate

ATTORNEY:

FORM 4160 (3/98)

13

INFORMAL PROBATE ADMINISTRATION

As discussed in Chapter 12 *Probate and Estate Administration*, New York State provides for a small estate administration under Article 13 of the SCPA. It allows an estate to be probated in a swift manner without the formalities or costs associated with a full probate proceeding reserved for large estates. This is the closest proceeding New York has to an informal probate proceeding.

14

TAX CONSIDERATIONS IN THE ADMINISTRATION OF ESTATES

A detailed discussion regarding the taxation of New York estates is covered in Chapter 10, *Estate Planning and Long-Term Care*. Sample New York State estate tax forms are found in Appendix C.



15

ETHICAL PRINCIPLES RELEVANT TO PRACTICING LEGAL ASSISTANTS

The information contained in the main text is applicable to the State of New York.

APPENDIX

A

Signature of Attorney _____
Print Name
Firm Name
Address

Filing fee paid \$ 1.00
_____ certificates @ \$.25 \$ n/a

Tel. No.

SURROGATE'S COURT OF THE STATE OF NEW YORK - ONTARIO COUNTY

VOLUNTARY ADMINISTRATION, Estate of

Deceased

AFFIDAVIT IN RELATION TO
SETTLEMENT OF ESTATE UNDER
ARTICLE 13, SCPA

FILE # _____

STATE OF NEW YORK }
COUNTY OF ONTARIO } ss.:

I, [name], being duly sworn, deposes and says:

(1) My domicile is:

(Street address) (City/Town/Village) (County) (State) (Zip code) (Telephone No.)

Mailing address [if different from domicile]:

(2) My interest is: [] distributee of decedent [state relationship]
[] other [specify]

(3) The name, domicile, date, place of death and citizenship of the decedent, to whose estate this proceeding relates, are as follows:

Name of decedent [include a/k/a, if applicable]:

Domicile of decedent: _____
(Street address) (City/Town/Village) (County) (State)

Date of death:

Place of death: _____
(City/Town/Village) (County) (State)

Citizenship: USA

(4) The decedent died: [] intestate (without a will) [] testate (the original will is attached)

(5) A search of the records of the court shows that no application has been made in the estate of the decedent for voluntary administration, letters of administration or for probate of a will and your affiant is informed and verily believes that no such application has ever been made to any other surrogate's court of this state.

(6) The names and addresses of the decedent's distributees under New York law, including non-marital children, descendants of predeceased non-marital children, and their relationship to the decedent are as follows: [if more space is needed, add a sheet of paper]

Name Post office address, including Zip Relationship [indicate if non-marital]

(7) *[If decedent had a will]* The names and addresses of all beneficiaries in the will of the decedent filed herewith are as follows: *[if more space is needed, add a sheet of paper]*

Name Post office address, including Zip Bequest

(8) The value of the entire personal property, wherever located, of the decedent, exclusive of joint bank accounts, trust accounts, U.S. savings bonds POD (payable on death) and jointly owned personal property, or property exempt under the EPTL Section 5-3.1, does not exceed \$20,000.00 (or if the decedent died before August 28, 1996, \$10,000).

(9) The following, exclusive of joint bank accounts, trust accounts, U.S. savings bonds POD (payable on death) and jointly owned personal property, or property exempt under the EPTL Section 5-3.1, is a complete list of all personal property owned by the decedent, either standing in the decedent's own name or owned by the decedent beneficially and including items of value in any safe deposit box: *[if more space is needed, add a sheet of paper]*

Items of personal property separately listed Value of each item

(EPTL exemption [See worksheet, item 8] \$ _____) Total \$ _____

(10) All of the liabilities of the decedent known to me are as follows:

Name of creditor Amount owed

(11) I undertake to act as voluntary administrator of the decedent's estate and to administer it pursuant to Article 13 of the SCPA. I agree to reduce all of the decedent's assets to my possession; to liquidate such assets to the extent necessary; to open an estate bank account in a bank of deposit or savings bank in this state, in which I shall deposit all money received; to sign all checks drawn on or withdrawals from such account in the name of the estate by myself as voluntary administrator; to pay the expenses of administration, the decedent's reasonable funeral expenses and debts in the order provided by law; and to distribute the balance to the person or persons and in the amount or amounts provided by law. As voluntary administrator I shall file in this court an account of all receipts and of disbursements made.

(12) I understand that this proceeding will not determine the estate tax liability, if any, in the event that the decedent had any interest in real property or any joint bank accounts, trust accounts, U.S. savings bonds POD (payable on death) or jointly owned or trust property.

(13) If letters testamentary or of administration are later granted, I acknowledge that my powers as voluntary administrator shall cease and I shall deliver to the court-appointed fiduciary a complete statement of my account and all assets and funds of the estate in my possession.

Sworn to before me on _____, 2001

(Signature of Affiant)

(Notary Public)

(Print Name)

My commission expires on _____

**ATTACH THIS WORKSHEET to the AFFIDAVIT of VOLUNTARY ADMINISTRATION
INSTRUCTIONS AND WORKSHEET FOR AFFIDAVIT OF VOLUNTARY ADMINISTRATION**

FILING FEE: \$1.00 plus ~~\$0.25 for each certificate~~. Please make check or money order payable to the "Ontario County Surrogate's Court."

ENVELOPES: submit 4in. X 9.5in. post paid envelopes addressed to each person listed in items 6 & 7 of the affidavit, plus one return addressed envelope to mail documents to the Voluntary Administrator or the attorney,

COURT ADDRESS: 27 North Main Street, Canandaigua, NY 14424; (716) 396-4055

If the affidavit is prepared by an attorney, sign, print name, address and phone number of attorney or law firm.

DECEDENT'S NAME: it must always be written the same as the signature appears on the will or, if there is no will, as it appears on the death certificate.

Answer all of the questions and complete the numbered paragraphs in the affidavit as follows:

(1) Enter the name, permanent residence address and telephone number of the applicant (affiant) who will be signing the affidavit.

(2) State whether the affiant is an executor (or alternate executor) named in the decedent's will or, if there is no will, how the affiant is related to the decedent (spouse, child, brother, sister, etc.).

(3) Enter the decedent's "official" name (see above), aliases (if any), permanent residence address, the date and place of death and whether or not a citizen. A CERTIFIED COPY OF THE DEATH CERTIFICATE (**with raised seal**) MUST BE FILED WITH THE AFFIDAVIT.

(4) State whether the deceased had a will; if so, check "testate" and **file original will**; if not, check "intestate".

(5) Verify with the court clerk that estate papers have not already been filed for the estate by some other person.

(6) Complete the following worksheet showing the classification of the decedent's distributees (nearest blood relatives): *[Information is required only as to those classes of surviving relatives who are deemed to be distributees as defined in EPTL 4-1.1. Indicate the number of survivors in each category. Insert "NA" for all classes of persons who are not distributees and who would not be entitled to inherit in the event of intestacy.]*

		<u>No/Yes</u>	
a	Spouse (husband or wife)	[]	Number of
	If "no", was the decedent divorced at time of death?	[]	<u>Survivors</u>
b-1	Marital and/or adopted children	[]	[]
	Descendants of predeceased marital/adopted children	[]	[]
b-2	Issue of the decedent who were adopted by decedent's blood relatives or the spouse of a former spouse. ¹	[]	[]
b-3	Nonmarital children of a male parent	[]	[]
	Descendants of predeceased nonmarital children of male	[]	[]

[Each of the above boxes must indicate either "no" or "yes". If "yes", the number of survivors in each category must be shown. If the number of survivors is unknown, insert a "?" and explain in detail in Paragraph 7. If either a, b-1 or b-2 indicates "yes", complete item b-3 (if applicable), but do not answer items c through h below. If a, b-1 and b-2 all indicate "no", you must continue to complete the classifications below (in the order shown) until the answer is "yes" to ONE of the classes of distributees or the answer is "no" to ALL of the categories shown.]

c	Father or mother	[]	[]
d	Brothers or sisters (either whole or half-blood)	[]	[]
	Descendants of predeceased brothers/sisters	[]	[]
e	Grandparents	[]	[]
f	Aunts/uncles	[]	[]
g	Descendants of predeceased aunts/uncles (1st cousins)	[]	[]
h	Children of predeceased first cousins	[]	[]

- paragraph 6, continued -

1 [Note: Include children adopted by a step-parent married to decedent's former spouse. Certain classifications of adopted out children retain their right to inherit from their biological ancestor. See Domestic Relations Law Section 117. Indicate the number here and explain in detail in Paragraph 7.]

Write the names and addresses (with Zip) of the decedent's distributees (as indicted above) and their relationship to the deceased. Show age of infant.

(7) If the deceased left a will, furnish the names and addresses of all the persons named as beneficiaries and their relationship, if any, to the deceased.

(8) Ascertain the value of the decedent's INDIVIDUALLY OWNED property. If it exceeds \$20,000, check with court clerk. **EXCLUDE the following:** joint bank and trust accounts, U.S. savings bonds POD, jointly owned personal property or property exempt under the EPTL. **If the decedent was survived by a spouse or any children under 21 years of age,** complete the following worksheet showing the property deemed to be exempt under EPTL Section 5-3.1(a): [For greater detail, you may use Form 6520, WORKSHEET FOR COMPUTATION OF VALUES OF EXEMPT PROPERTY, to compute the amounts of each exemption.]

An exemption is claimed for [] spouse [] children under 21 years of age for the following classifications of property under Estates, Powers & Trusts Law Section 5-3.1(a):

- | | |
|---|----------------|
| (1) Furnishings, appliances, provisions, etc. (max. \$10,000) | \$ _____ |
| (2) Family pictures and books (max. \$ 1,000) | _____ |
| (3) Domestic animals, farm machinery, etc. (max. \$15,000) | _____ |
| (4) One motor vehicle (max. \$15,000) | _____ |
| (5) Money or other personal property (max. \$15,000) | _____ |
| (Enter this total in paragraph 9 of the Affidavit) | Total \$ _____ |

(9) Separately list each individually owned bank account, security or item of personal property for which a certificate of voluntary administration is needed to effect the collection of disposition thereof. One certificate will be furnished by the court for each item.

(10) Furnish the names of creditors of the deceased, how much was paid by you or others to them (for which reimbursement is sought) and how much remains unpaid. **If the deceased was receiving Medicaid or other public assistance,** check with the Ontario County Department of Social Services to determine the amount of the claim, if any.

(11) through (13) The voluntary administrator will be undertaking serious responsibilities and will be required to account to the court for the administration of the estate and the disposition of assets. Be sure you or the voluntary administrator understand these representations.

Please address the post paid envelopes to each of the persons who is listed as a distributee in item 6 of the affidavit and, if there is a will, to all of the persons listed in item 7 of the affidavit. Also prepare a return addressed envelope for the court to send papers to the Voluntary Administrator or attorney.

ATTACH THIS WORKSHEET TO THE AFFIDAVIT

SURROGATE'S COURT OF THE STATE OF NEW YORK - ONTARIO COUNTY

VOLUNTARY ADMINISTRATION
ESTATE OF

REPORT AND ACCOUNT IN
SETTLEMENT OF ESTATE
UNDER SCPA ARTICLE 13

Deceased _____

FILE # _____

The undersigned, authorized by this court to act as the voluntary administrator of the above entitled Estate, reports and accounts as follows: *[If more space is needed, add a sheet of paper or use back of this page.]*

1.(a) The following personal property of the decedent came into my possession:

(b) Of the personal property set forth above, the following was converted into cash in the amounts indicated:

The total value of the personal property and cash thereof does not exceed \$10,000.

2. All of the personal property and cash has been disbursed or distributed as follows:

Copies of receipts or cancelled checks showing the payment of expenses of administration, disbursements, or distributions are attached.

3. No part of the estate of the decedent remains in my hands.

Voluntary Administrator

STATE OF NEW YORK)
COUNTY OF ONTARIO)ss.:

_____ being duly sworn, deposes and says:
I have read the foregoing Report and Account and know the contents thereof; the matters and things therein stated are true as of my own knowledge; the foregoing Account is in all respects just and true and contains a full, particular and true account of all money and property of the deceased coming into my possession; and the administration expenses, disbursements and distributions shown have been actually made for the purposes and reasons therein stated.

Subscribed and sworn to before me
on _____, 2000

Voluntary Administrator

Notary Public

My commission expires:

ATTORNEY

Name:
Address:

Tel.No.:

1350 (3/98)



APPENDIX
B

ATTORNEY

Signature: _____
Print Name: _____ Tel. No.: _____
Firm Name: _____
Address: _____

Filing fee paid \$ _____
certificates paid \$ _____
Temp. certs. paid \$ _____
Citation Returnable: _____

SURROGATE'S COURT OF THE STATE OF NEW YORK
ADMINISTRATION PROCEEDING, ESTATE OF

ONTARIO COUNTY

PETITION FOR LETTERS OF:
 Administration
 Limited Administration
 Administration with Limitations
 Temporary Administration

Deceased

FILE NUMBER _____

To the Surrogate's Court of Ontario County, it is respectfully alleged:

(1) The name, citizenship, domicile and interest in this proceeding of each petitioner are as follows: [See Instructions, Item 2]

Name: _____ Citizenship: USA other: [Specify]
Domicile or if a financial institution, Principal Office: _____
(Street address) (City, Town or Village) (County) (State) (Zip) (Telephone Number)
Mailing address, if different from domicile, is: _____

Name: _____ Citizenship: USA other: [Specify]
Domicile or if a financial institution, Principal Office: _____
(Street address) (City, Town or Village) (County) (State) (Zip) (Telephone Number)

Interest of Petitioner: [check one] Distributee [state relationship] _____ Other: [Specify]
The proposed administrator is is not an attorney. [If an attorney is to receive letters, see Instructions Item 2b.]

(2) The name, domicile, date and place of death, and national citizenship of the decedent are as follows: [See Item 3]

Name: _____ [Name should be the same as on the death certificate.]
a/k/a [if required]: _____
Domicile: _____
(Street address) (City, Town or Village Post Office) (State) (Zip)
Township of: _____ County of: _____
Date of death: _____ [See Rule 207.15(b)] Place of Death: _____

Citizenship [Check one]: USA Other [Specify]

(3)(a) The estimated gross value of the decedent's personal property **passing by intestacy** is less than: _____ [See Instructions, Item 4]
\$ _____
(b) The estimated value of the decedent's real estate in New York State passing by intestacy is less than:
Improved real property with buildings, etc.: \$ _____
Unimproved real property (vacant land): \$ _____
A brief description of each parcel is as follows:

(c) The estimated gross rent for a period of 18 months is: \$ _____

(d) Upon information and belief, the following right of action existed on behalf of the decedent or is granted to the administrator by special provision of law, and it is impractical to give a bond sufficient to cover the probable amount to be recovered therein. [Read Instructions, Item 4c and write "None" or refer to and attach Schedule L.]

(4) A diligent search and inquiry, including a search of any safe deposit box, has been made for a will of the decedent and none has been found. No petitioner has been able to obtain any information concerning any will of the decedent and each alleges, upon information and belief, that the decedent died intestate, without leaving any last will.

(5) A search of the records of this court shows that no application has ever been made for letters of administration upon the estate of the decedent, for the probate of a will of the decedent, or for the qualification of a voluntary administrator for the estate of the decedent, and each petitioner is informed and believes that no such application has ever been made to the Surrogate's Court of any other county of this state. [See Item 8]

6. The decedent was survived by distributees classified as follows: [Before completing, read Instructions, Item 5]

	Yes/No/NA	Number of Survivors
(a) Spouse (husband / wife) If "No", was decedent divorced? [See Item 5b]	[] []	
(b)(1) Marital and/or adopted children [See Item 5c] Issue of predeceased marital and/or adopted children	[] []	[] []
(b)(2) Issue of the decedent adopted by persons related to the decedent or the spouse of a former spouse [See Item 5d]	[]	[]
(b)(3) Nonmarital children of a male decedent [See Item 5c] Issue of predeceased nonmarital children	[] []	[] []

[You must insert the answer "Yes" or "No" for all of the above bracketed categories.]

(c) Mother / Father	[]	[]
(d) Sisters and/or brothers, either of the whole or half blood Issue of predeceased sisters and/or brothers (nieces and nephews)	[] []	[] []
(e) Grandparents (maternal and paternal)	[]	[]
(f) Aunts and/or uncles (maternal and paternal) Children of predeceased aunts and/or uncles (first cousins)	[] []	[] []
(g) First cousins once removed (children of predeceased first cousins)	[]	[]

(7) The decedent left surviving the following distributees, or other necessary parties, whose names, degrees of relationship, domiciles, post office addresses and citizenship are as follows: [Before writing names, etc., read Instructions, Item 6]

(a) The following are of full age and sound mind and under no disability:

Name	Relationship	Domicile and Mailing Address	Citizenship
------	--------------	------------------------------	-------------

(b) The following are infants and/or persons under disability:
 [See Instructions, Item 6 and attach Schedule A, B, C and/or D, where appropriate.]

Name	Relationship	Domicile and Mailing Address	Citizenship
------	--------------	------------------------------	-------------

(c) [If the decedent is survived by a spouse and parent(s), but no issue, and a claim for wrongful death exists, check here and furnish names and addresses of parents below. See Instructions, Item 7b.]

(8) No outstanding debts or funeral expenses exist except: [enter "None" or specify]

(9) No persons, firms or corporations are interested in this proceeding other than those mentioned above. [See Item 8]

WHEREFORE each petitioner prays that: [See Instructions, Item 9 and check and complete all relief requested]

- (a) process be issued to all necessary parties to show cause why letters should not be issued as indicated below;
- (b) an order be granted directing the service of process pursuant to the provisions of SCPA Article 3, upon the persons named in Paragraph (7) hereof whose names or whereabouts are unknown and cannot, after due diligence, be ascertained or who may be persons on whom service by personal delivery cannot be made; and
- (c) a decree be entered awarding letters as follows: [Check and complete appropriate request.]

- Letters of Administration to
- Limited Letters of Administration to
- Letters of Administration with Limitations to
- Temporary Letters of Administration to

- (d) that the letters be limited as follows:
 - with respect to the prosecution or enforcement of a cause of action on behalf of the estate, no fiduciary named above may enforce any judgement or receive any funds without further order of this court.
 - [specify any other limitations]

(e) and that the petitioner(s) have such other and further relief as may be proper.

Dated: _____, 199

 (Name of Corporate Petitioner)

 (Signature of Petitioner)

 (Signature of Officer)

 (Signature of Petitioner)

[Each petitioner must both sign the petition **and** sign the verification before a notary or other such official]

COMBINED VERIFICATION, OATH AND DESIGNATION
[for persons other than trust companies]

STATE OF NEW YORK}
COUNTY OF ONTARIO} ss.

Each of the undersigned petitioners, being duly sworn, says: [See Item 10]

(1) VERIFICATION: I have read the foregoing petition signed by me (including all annexed Schedules), I know the contents thereof, the same is true of my own knowledge, except as to the matters stated to be alleged upon information and belief, and as to those matters I believe it to be true.

(2) OATH OF ADMINISTRATOR: I am over eighteen years of age and a citizen of the United States; I am a fiduciary who has signed the foregoing petition; I am entitled to letters for the office indicated above and will well, faithfully and honestly discharge the duties of my office and the trust reposed in me; I am not ineligible to receive letters and will duly account for all money and other property that will come into my hands.

(3) DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I designate the Chief Clerk of the Ontario County Surrogate's Court, or the Chief Clerk's successor, as a person on whom service of process issuing from such court may be made, in like manner and with like effect as if it were served personally upon me whenever, after due diligence, I cannot be found and served in this State.

My domiciliary address is:

My domiciliary address is:

Street:

Street:

P. O.:

P. O.:

State:

Zip:

State:

Zip:

County:

County:

(Signature)

(Signature)

(Print Name)

(Print Name)

On _____, 199___, before me personally came

to me known to be the person(s) described in and who executed the foregoing instrument. Such person(s) duly swore to such instrument before me and duly acknowledged that he executed the same.

(Notary Public)

My commission expires on:

COMBINED VERIFICATION, CONSENT AND DESIGNATION
[For trust companies and corporations]

STATE OF NEW YORK
COUNTY OF ONTARIO} ss.

I, the undersigned, a [Title]

of [Name of Bank or Trust Company]

being duly sworn, say:

(1) VERIFICATION: I have read the foregoing petition subscribed by me (including all Schedules annexed thereto), I know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

(2) CONSENT: The above named fiduciary, a national banking association or corporation under the laws of the State of New York, hereby accepts its appointment as administrator as classified in the foregoing petition and consents to act as such fiduciary.

(3) DESIGNATION: The above named fiduciary, a national banking association or corporation under the laws of the State of New York, having its principal office at the address written below, hereby designates the Chief Clerk of the Ontario County Surrogate's Court, or the Chief Clerk's successor, as a person on whom service of any process issuing from such Court may be made, in like manner and with like effect as if it were served personally upon such corporation whenever, after due diligence, one of its proper officers cannot be found and served within the State of New York.

Principal office address

(Name of Bank or Trust Company)

By: _____
(Signature)

(Type Name and Title)

On _____, 199____, before me personally came,

to me known, who duly swore to the foregoing instrument and who swore that he resides at

and that he is a _____ of _____, the corporation described in and which executed such instrument; and that he signed the same thereto by order of the board of directors of the corporation.

(Notary Public)

My commission expires on:

SURROGATE'S COURT OF THE STATE OF NEW YORK - ONTARIO COUNTY

ADMINISTRATION PROCEEDING, Estate of

a/k/a

WAIVER OF CITATION,
RENUNCIATION AND
CONSENT TO APPOINTMENT
OF ADMINISTRATOR

Deceased

FILE NUMBER

The undersigned, [] a person of full age, sound mind and residing at the address written below [] a corporation having its principal office at the address written below, a distributee or creditor of the above named decedent, hereby voluntarily appears in the Surrogate's Court of Ontario County, New York and waives the issuance and service of a citation in this matter, renounces all right and claim to Letters of Administration of the above captioned estate and consents that

- [] Letters of Administration
- [] Letters of Administration with Limitations
- [] Limited Letters of Administration

be issued to or any other person or persons entitled thereto without any notice whatsoever to the undersigned, and further consents that

[] an administrator's bond be dispensed with, hereby specifically releasing any claim that the undersigned might have under any bond that may be filed.

[] an administrator's bond in the amount of \$ _____ be posted.

Relationship	Street Address	City/Town, State, Zip
DATE: _____, 199	Name of Corporation	Signature
STATE OF NEW YORK } COUNTY OF ONTARIO } ss.		Print Name

On _____, 199 , before me personally appeared

[for individual] to me known and known to me to be the person described in and who executed the foregoing renunciation and duly acknowledged the execution thereof.

[for corporation] to me known, who duly swore to the foregoing instrument and who said that he/she resides at _____ of _____ the corporation/ national banking association described in and which executed the above renunciation and waiver; and that he/she signed his/her name thereto by order of the board of directors of the corporation.

(Notary Public) [Affix Notary Stamp or Seal]

My commission expires:

Name of Attorney: _____ Tel.No.: _____
Address of Attorney: _____

FORM 1120 (7/98)

SURROGATE'S COURT OF THE STATE OF NEW YORK - ONTARIO COUNTY
ADMINISTRATION PROCEEDING, ESTATE OF

NOTICE OF APPLICATION FOR
LETTERS OF ADMINISTRATION
(SCPA § 1005)

Deceased _____

FILE NUMBER _____

Notice is hereby given that:

(1) An application for Letters of Administration upon the estate of the above named decedent has been made by _____, petitioner, whose post address is: _____

(2) Each and every name of the intestate decedent known to the undersigned is as indicated in the above caption.

(3) Petitioner prays that a decree be made granting the issuance of Letters of Administration to _____

(4) The name and post office address of each and every distributee of the above-named decedent, as set forth in the petition and known to the undersigned, are as follows:

(a) Distributees who have been cited, waived citation or appeared in this proceeding:

Name of Distributee

Post Office Address

(b) Other distributees entitled to this notice: [*name and post office address*]

(5) The undersigned knows of no of any other distributees of the decedent.

(6) Letters of Administration will issue on or after _____, 19__

Dated: _____, 19__

Attorney for Petitioner

Signature of Petitioner or Attorney

Name

Print Name

Address

Address

Tel. No.

FORM 1151 (4/95)

SURROGATE'S COURT OF THE STATE OF NEW YORK
ADMINISTRATION PROCEEDING, ESTATE OF

ONTARIO COUNTY

AFFIDAVIT OF MAILING
NOTICE OF APPLICATION FOR
LETTERS OF ADMINISTRATION
(SCPA § 1005)

Deceased _____

FILE NUMBER _____

STATE OF NEW YORK }

COUNTY OF ONTARIO } ss.:

_____, being duly sworn, deposes and says:

I am over eighteen years of age and reside at

On _____, 19__ deponent mailed a copy of the foregoing Notice of Application for Letters of Administration, contained in a securely closed postpaid wrapper, directed to each of the persons, named in paragraph (4)(b) of the Notice of Application, at the addresses set forth therein, by depositing the notice in an official depository of the United States Post Office, located at _____, as follows:

Name

Address on Envelope

Sworn to before me on

_____, 19__

Affiant

Notary Public

My commission expires:

Attorney for Petitioner

Name
Address

Tel. No.

FORM 1152 (4/95)

SURROGATE'S COURT OF THE STATE OF NEW YORK - ONTARIO COUNTY

ADMINISTRATION PROCEEDING, ESTATE OF

DECREE APPOINTING
ADMINISTRATOR

Deceased _____

FILE NUMBER _____

A petition having been filed by _____
praying that administration of the goods, chattels and credits of the above named decedent be granted to

and all persons named in the petition, required to be cited, having been duly cited to show cause why the relief prayed for therein should not be granted or having duly waived the issuance of such citation and having consented to such relief; and it appearing that each administrator named above is in all respects competent to act as administrator of the estate of the deceased, and

a bond having been filed and approved in the amount of \$ _____

a bond having been dispensed with by the court

and each administrator otherwise having qualified therefore; now, after due deliberation, with no one appearing in opposition to the petition, it is

ORDERED AND DECREED that _____ Letters of Administration issue to _____

; and it is further

ORDERED AND DECREED that the authority of the administrator or administrators be restricted in accordance with, and that letters herein issued contain, the limitations, if any, as follows:

No limitations are imposed

The following limitations are imposed: [See Instructions, page 8.]

Dated: _____, 199__

Surrogate

ATTORNEY:

FORM 1160 (4/95)



APPENDIX
C

For office use only



New York State Department of Taxation and Finance

New York State Estate Tax Return

ET-706

(4/01)

For an estate of an individual whose date of death is on or after February 1, 2000

Check here if this is an amended return

Decedent's Last name		First name		Middle initial	Social security number
Address of decedent at time of death (number and street)					Date of death
City, village, or post office			State	ZIP code	County of residence
On the date of death, decedent was a: <input type="checkbox"/> Resident of New York State					<input type="checkbox"/> Nonresident of New York State (attach completed Form ET-141, New York State Estate Tax Domicile Affidavit)
Employer identification number (EIN) of the estate				Name and EIN of any trusts created or funded by the will	
Executor – If you are submitting <i>Letters Testamentary</i> or <i>Letters of Administration</i> with this form, indicate in this box the type of letters. Enter L if regular, LL if limited letters. If you are not submitting letters with this form, enter N .					
Surrogate's court – If a proceeding for probate or administration has commenced in a surrogate's court in New York State, enter county.					

Attorney's or authorized representative's Last name			First name	MI	Executor's Last name			First name	MI
In care of (firm's name)				Check box if POA is attached <input type="checkbox"/>	If more than one executor, check box (see instructions) <input type="checkbox"/>				
Address of attorney or authorized representative					Address of executor				
City, village, or post office			State	ZIP code	City, village, or post office			State	ZIP code
Social security number of attorney or authorized rep.		Telephone number ()			Social security number of executor		Telephone number ()		

If the decedent possessed a cause of action or was a plaintiff in any litigation at the time of death, check this box and complete *Schedule 3* on the back (see instructions)

Installment payments of tax for closely held business.
Do you elect to pay the tax in installments as described in IRC section 6166 (NY Tax Law section 997)? If Yes, attach Form ET-415 in duplicate. Yes No

Releases of lien are requested. Attach Form(s) ET-117 (see instructions) (Enter number of counties)

Federal estate tax return required? (either federal Form 706 or 706-NA) Yes No
If Yes, attach a copy and complete the following: Taxable estate from line 3 of federal Form 706 or line 1 of Form 706-NA
Gross estate tax from line 10 of federal Form 706 or line 6 of Form 706-NA

Tax computation	1 Federal credit for state death taxes (from line 15, Part 2, page 1, of federal Form 706 or line 9, Part II, of Form 706-NA)	1	
	2 Estate tax or inheritance tax payable to another state(s), allowable as a federal credit (if none, skip lines 3, 5, 6, and 12 through 19, enter zero on line 7, and enter the amount from line 1 on line 8)	2	
	3 Residents: enter amount from line 14, Sch. 1, on back Nonresidents: enter amount from line 19, Sch. 2, on back	3	
	4 Federal gross estate from line 1 of federal Form 706 or line 1, Sch. B, pg. 2 of Form 706-NA	4	
	5 Divide line 3 by line 4 (round the decimal to four places). The result should not be greater than 1.0	5	
	6 Multiply the amount on line 1 by the decimal on line 5	6	
	7 Limitation (enter the smaller of line 2 or line 6, if any; otherwise, enter "0")	7	
	8 New York State estate tax (subtract the amount on line 7, if any, from the amount on line 1)	8	
	9 Prior tax payments, if any (attach a schedule of dates and amounts)	9	
	10 If line 9 is less than line 8, subtract line 9 from line 8. This is the amount you owe	10	
	11 If line 9 is greater than line 8, subtract line 8 from line 9. This is the amount to be refunded to you	11	

If an attorney or authorized representative is listed above, he or she must complete the following declaration:
I declare that I am (check one or more): an attorney; a certified public accountant; an enrolled agent; or
 a public accountant enrolled with the New York State Education Department; and agree to represent the executor for the estate, and I am authorized to receive tax information regarding this estate.

Signature of attorney or authorized representative _____ Date _____

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer other than the executor is based on all information of which preparer has any knowledge. Furthermore, I/we, as executor(s) for this estate, authorize the person, if any, named as my/our representative on this return to receive confidential tax information regarding this estate.

Signature of executor	Date	Signature of co-executor	Date
Signature of preparer other than executor		Date	
Address of preparer		City	State ZIP code

Mail your return and payment (if any) to: **NYS ESTATE TAX, PROCESSING CENTER, PO BOX 5556, NEW YORK NY 10087-5556**

Schedule 1 - Resident

List below each item of real and tangible personal property **located outside New York State**. Include the item number, the schedule of federal Form 706 on which it was reported, and the reported value of the property.

Item number	Description	Value	
12	Total value of property listed above	12	
13	Property subject to a limited power of appointment created before September 1, 1930, includable in the New York gross estate under section 957 of the Tax Law, if any (<i>see instructions</i>)	13	
14	Subtract line 13 from line 12; enter the result here and on line 3, on the front of this form	14	

Schedule 2 - Nonresident

15	Federal gross estate from line 4, on the front of this form	15	
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List below each item of real and tangible personal property **located in New York State**. Include the item number, the schedule of federal Form 706 or 706-NA on which it was reported, and the value reported.

Item number	Description	Value	
16	Total value of property listed above	16	
17	Property subject to a limited power of appointment created before September 1, 1930, includable in the New York gross estate under section 957 of the Tax Law, if any (<i>see instructions</i>)	17	
18	Add lines 16 and 17	18	
19	Subtract line 18 from line 15; enter the result here and on line 3, on the front of this form	19	

Schedule 3 - Description of litigation or cause of action

In the area provided, describe any litigation in which the decedent was a plaintiff, or litigation that is pending or contemplated on behalf of the decedent. Include the actual or estimated values of such litigation (*see Litigation information* on page 3 of Form ET-706-I, *Instructions for Form ET-706, New York State Estate Tax Return*).

This return must be filed within nine months after the date of death unless an extension of time to file the return has been granted.

If you use **any** private delivery service, address your return to: JP Morgan, NYS Government Tax Processing, 12 Corporate Woods Blvd-4th Floor, Albany NY 12211-2524.

For additional information refer to ET-706-I, Instructions for Form ET-706 New York State Estate Tax Return.

Reminders: Sign this return. If there is an amount due on line 10, make check payable to the **Commissioner of Taxation and Finance**. Also, if you must file a federal estate tax return, attach a copy of your completed federal return along with any accompanying schedules and supplementary information.