



Guide to Basic Kentucky Probate Procedures





*Guide can help
self-represented litigants
handle probate cases*

Many individuals are faced with handling probate cases, which involves settling and administering estates, guardianships, curatorships and name changes. Some people will secure the services of an attorney while others will exercise the right to represent themselves in a legal action without the assistance of an attorney. When individuals operate without an attorney, the courts refer to them as pro se – or self-represented – litigants.

Because self-represented litigants are required to act in accordance with the Kentucky Revised Statutes and any local court rules, the Kentucky Administrative Office of the Courts designed this booklet to help individuals understand how to meet the legal requirements for probate cases. We want to make the court system accessible to all who need its services and I believe that self-represented litigants will find this to be a valuable guide.

*John D. Minton, Jr.
Chief Justice of Kentucky*

Disclaimer

This informational booklet about the Probate Division of District Court should:

- Help you understand the probate process.
- Provide step-by-step guidance through numerous procedures.

This informational booklet **will not**:

- Provide legal advice.
- Make you an authority on probate procedures.
- Take the place of an attorney. If you choose to represent yourself and be your own attorney, then you are expected to do the things an attorney is expected to do.

You should read this entire probate booklet for information concerning the rights and duties of all individuals involved in the probate process.

How the Office of Circuit Clerk Can Help

The Office of Circuit Court Clerk in your county can provide the legal forms necessary to file a probate case. **However, the circuit court clerk is not an attorney and cannot give you legal advice.** Many of the forms mentioned in this booklet are available on the Kentucky Court of Justice Web site. See page 1 on how to obtain the legal forms.

Statutory Reference. The law covering probate actions is found in the Kentucky Revised Statutes, Chapters 394 through 395.

Attorney Referral. If you need an attorney, the following bar associations can refer you to an attorney in your area:

Kentucky Bar Association Lawyer Locator Service
www.kybar.org

Fayette County Bar Association
859-225-9897

Louisville Bar Association Kentucky Lawyer Referral Service
502-583-1801

Northern Kentucky Bar Association
859-781-1300

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Introduction

Probate is the process of settling and administering estates, guardianships, curatorships and name changes. Although trusts are also administered through Probate Court, most are complicated and beyond the scope of this brochure.

Self-represented litigants are those who represent themselves in a legal action without the aid of an attorney. Just as with any other legal proceeding, individuals have the right to handle probate matters without an attorney. However, please remember that self-represented litigants are required to act in accordance with the Kentucky Revised Statutes and any local court rules.

We have designed this brochure to help self-represented litigants understand the process for settling an estate without the assistance of an attorney. The resources listed below will help in that endeavor.

How to Obtain Legal Forms

This brochure refers to forms that are necessary to carry out specific legal actions. There are two ways to obtain these legal forms.

The forms can be downloaded from the Kentucky Court of Justice Web site at www.courts.ky.gov. Click on Legal Forms at the top of the home page. You can then search for and print the probate forms.

You can also obtain copies of the forms from the District Court Division of the Office of Circuit Court Clerk in your county. The address of the circuit court clerk's office should be listed in your local phone book or you can find it at www.courts.ky.gov. Click on Counties on the home page and then click on the name of the specific county for contact information. You must visit the office in person to obtain the proper forms. Please be aware that the circuit court clerks cannot give legal advice. It may be in your best interest to seek the services of an attorney.

Kentucky Revised Statutes. This brochure also refers to the Kentucky Revised Statutes that are relevant to Probate Court. These statutes can be found on the Kentucky Legislative Research Commission Web site at www.lrc.ky.gov. Click on Kentucky Law, then on KY Revised Statutes and then search by Title & Chapter based on the citations provided in this brochure. Your local library also might have copies of the statutes.

Settling an Estate

General

Settling the estate of a deceased person (decedent) is a process that involves winding up the financial matters of the decedent, collecting assets, paying debts, and distributing the remaining assets according to the terms of the will or according to the law that applies when there is no will.

Getting Started

The first step is to locate the deceased person's original will. The second step is to file a petition, using form AOC-805, which asks the District Court judge to admit the will to probate and to appoint an executor to administer and settle the decedent's estate. KRS §§394.140, 394.145. If there is no will, this same petition will request the court to appoint an administrator to handle the financial affairs of the deceased. Both an executor and/or an administrator are also referred to as a personal representative. KRS Chapter 395.

Proving the Will

Unless the will is a "self-proved will," it must be proven in court by at least one of the witnesses. A "self-proved will" is signed by the decedent along with two witnesses, all signatures are witnessed by a notary public and it includes certain language required by statute (See KRS 394.225). KRS §§394.040, 394.225-394.235. In the case of a holographic will, which is one that is entirely in the handwriting of the decedent, the only testimony required is proof of the decedent's handwriting by a person familiar with it. KRS §394.040.

Administering the Estate

Generally it is the duty of the personal representative to take over the assets of the decedent and to manage and protect those assets. KRS §§395.195, 395.197. The personal representative owes the highest good faith to the creditors and heirs of the decedent's estate and must act accordingly. KRS §395.120. Within 60 days of his or her appointment, the personal representative must file an inventory, in duplicate, of the estate's assets with the District Court. The inventory must list the value of the assets at the time of the decedent's death. The personal representative may use form AOC-841. KRS §395.250.

Settling the Estate

After paying the debts and any income and death taxes owed by the estate, and after distributing any remaining assets of the estate to the heirs, the personal representative must prepare and file a final settlement with the District Court using form AOC-846. KRS §§395.190, 395.510. The settlement may not be filed until at least six months from the date the personal representative was appointed. KRS §395.190. If settling the estate takes more than two years, a periodic settlement may be required. KRS §395.610.

Formal Settlement

A formal settlement must include a detailed record of all receipts and disbursements accompanied by canceled checks. A formal settlement must reflect the distribution to the heirs of their respective bequests. Finally, it must also reflect the amount the personal representative and his or her attorney are compensated and the basis for such compensation. KRS §§395.620, 395.625.

Informal Settlement

The District Court may accept an informal settlement when each heir has signed a notarized waiver stating that he or she has received his or her share of the estate and waives the requirements of a formal accounting and settlement. An informal settlement must also include proof of distribution of any specific bequests and either an Affidavit of Exemption when no inheritance taxes are owed on the estate or an acceptance letter from the Kentucky Revenue Cabinet. The settlement must also reflect the amount of attorney fees paid by the estate, if any. This process requires forms AOC-850 and AOC-851. KRS §395.605.

Dispensing With Administration

The law allows certain individuals to ask a District Court judge to direct the transfer of estate assets without the need for further court proceedings. KRS §395.450. This is known as dispensing with administration.

A Petition to Dispense With Administration, which is form AOC-830, may be filed whether a person dies with or without a will, by the following individuals in the following priority:

Surviving Spouse. If the decedent's personal estate is \$15,000 or less, the surviving spouse may petition the court to transfer the property to him or her. KRS §§395.455, 391.030.

Surviving Children. If the decedent's personal estate is \$15,000 or less and there is no surviving spouse, the surviving child(ren) may petition the court to transfer the property to them. KRS §§395.455, 391.030.

Preferred Creditors. The law recognizes certain claims as "preferred," such as 1) funeral expenses or 2) debts or taxes with a preference under Kentucky or federal law. KRS §396.095. Any person, including a surviving spouse or child(ren), may provide proof of payment of a preferred claim and petition the District Court judge to transfer the decedent's personal estate to them as a "preferred creditor" up to the amount of the paid claim. KRS §395.455.

Fiduciaries & Sureties

The Probate Court is responsible for appointing and supervising fiduciaries. A fiduciary is a person appointed by the court to handle someone else's money. There are several kinds of fiduciaries:

Executor. A person named in a will to settle an estate.

Administrator. A person appointed by the court to settle an estate of a person who had no will.

Guardian. A person appointed to handle funds belonging to a minor.

Curator. A person selected by someone who does not believe that he or she can manage his or her own finances and asks the court to appoint someone to do so for them.

These fiduciaries must all be appointed by the Probate Court and are accountable to it. This means that they may be required to file periodic reports with the court and to ultimately file a final settlement showing what funds have come into the hands of the fiduciary and how those funds have been spent.

The court will review these reports to ensure the fiduciary has done his or her job properly. The court can hold a fiduciary personally responsible if funds have not been handled in accordance with the law. The court can also remove fiduciaries who do not comply with their duties or with the orders of the court.

The law requires every fiduciary to sign a bond before beginning his or her duties. The bond is simply a written promise that the fiduciary will carry out his or her responsibilities in accordance with the law.

Fiduciary Must Provide a Surety

A fiduciary is required to provide a surety on his or her bond. A surety is a person or company, such as an insurance company, that can be thought of as a co-signer on the bond. In other words, if a fiduciary does something wrong, the surety can be compelled to make it good, just as a co-signer on a loan must make good if the borrower fails to pay the loan. Where the will provides or where all of the beneficiaries agree, the court may not require a surety.

Fiduciaries are entitled to reasonable compensation for their services, subject to approval of the court.

A person who desires to be appointed as a fiduciary should consider the obligations and responsibilities of a fiduciary, as well as the authority it confers. A potential fiduciary also needs to consider whether a surety is likely to be required by the court for his or her service and will need to make arrangements in advance to obtain surety in order to complete the process of appointment of the court.

A fiduciary cannot act until his or her appointment is complete, including signing the bond and providing surety, if required.

Relevant Statutes & Legal Forms

Application/Petition	KRS §395.015	Form AOC-805
Appointment	KRS §394.145	Form AOC-806
Oath	KRS §395.120	
Bond/Surety	KRS §395.130	Form AOC-825
Compensation	KRS §395.150	
General Powers	KRS §§395.195, 395-197	
Removal	KRS §395.610	
Reporting	KRS §395.610	

Guardians, Limited Guardians & Conservators for Minors

There are several reasons why a minor – any person under age 18 – may require a guardian, even if one or both of the minor’s parents are still living. The most common reasons a minor would require a guardian or conservator are:

- When both parents have died.
- To accept an inheritance.
- To receive settlement proceeds from a lawsuit.
- To qualify for health insurance coverage, consent to medical treatment or make decisions about his or her education.

A guardian for a minor typically takes one of three forms: guardian, limited guardian or conservator. A **guardian** is responsible for the care, custody and control of the minor and is also responsible for managing the minor’s financial resources. A **limited guardian** is responsible for the care and control of the minor, but does not have the power to manage the minor’s assets. A **conservator** is responsible only for managing the minor’s financial resources.

Any interested person may petition the District Court to appoint a guardian, limited guardian or conservator for the minor. Once the petition is filed and the filing fee paid, a hearing date will be set with the court. The person requesting the appointment as guardian must be present at the court hearing. If the minor is 14 years old or older, the minor must also be present and consent to the appointment.

The guardian or conservator must file an inventory with the court within 60 days of his or her appointment. The guardian or conservator must also file an accounting with the court every one to two years thereafter, depending on the value of the minor’s assets.

Relevant Statutes & Legal Form

Application/Appointment	KRS §395.380	
Oath	KRS §395.380	
Bond/Surety	KRS §395.380	Form AOC-825
General Fiduciary Duties	KRS Chapter 395	
Periodic Accounting	KRS §395.610	
Duties/Inventory	KRS §395.390	

Curators

Individuals who are no longer able to manage their business affairs properly because of their advanced age or a physical disability may request the District Court to appoint a curator to manage their affairs for them. Once appointed, the curator is responsible for the person's property and business affairs only. The curator is not responsible for the physical well-being of the person.

The person requesting the appointment of a curator must file a petition with the District Court. The court will set a hearing date once the petition has been filed and the filing fee paid. Both the person requesting the appointment of a curator and the person being appointed as curator must be present at the court hearing.

The curator will be responsible for filing an inventory with the court within 60 days of his or her appointment. The curator will also be responsible for filing an accounting with the court every two years thereafter.

Relevant Statutes & Legal Form

Application/Appointment	KRS §§387.320, 395.410
Oath/Bond/Surety	KRS §387.320 Form AOC-825
Duties of Curator/Inventory	KRS §395.420
Periodic Accounting	KRS §395.610
General Fiduciary Duties	KRS Chapter 395

Petitioning for a Name Change

The Probate Court also handles petitions for a name change, whether for an adult or a minor. When petitioning for a name change, please use the following forms, which **must be typed** and not handwritten.

Petition for Name Change: Form AOC-295

This form must be completed in duplicate and signed by the petitioner in front of a notary public or a probate clerk. If the name change is for a minor, the form must also be signed by the biological parents.

Name Change for a Minor: KRS §401.020

If both parents do not sign the petition, the petitioning parent must notify the other parent by both certified and regular mail at his or her last known address, of the attempt to change the child's name. The petitioning parent can provide notice to the other parent by sending a copy of the petition. The petitioning parent must include the court date and time and the courtroom number in the space provided on the form.

A court date is required for all name changes for minors. Check with your local Office of Circuit Court Clerk for court dates.

Name Change for an Adult: KRS §401.010

If the petitioner has a valid photo identification then a court appearance is not required and the case will simply go to the judge for his or her signature. If the petitioner does not have a photo identification, then a court date will have to be scheduled. Check with the Office of Circuit Court Clerk in your county for court dates.

Filing Fees

The Office of Circuit Court Clerk in your county can tell you the amount of the required filing fee. There may also be a small attorney tax required for attorneys who file these forms. The Kentucky Office of Vital Statistics usually requires certified copies of the order/judgment for a birth certificate and Social Security card. Schools, employers and the Division of Driver Licensing usually require certified copies as well.



Kentucky Administrative Office of the Courts
Frankfort, Kentucky 40601
Phone 502-573-2350 or 800-928-2350
www.courts.ky.gov