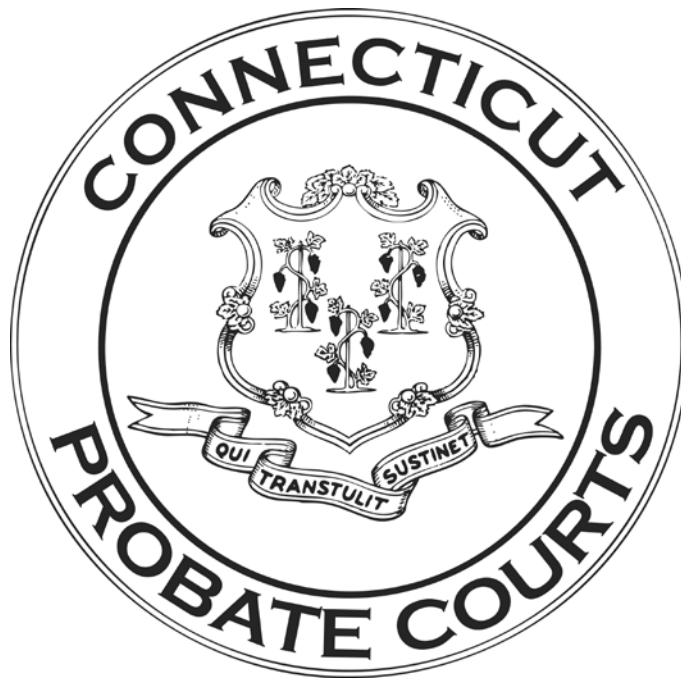


PROBATE COURT USER GUIDE

ADMINISTRATION OF DECEDENTS' ESTATES



PUBLISHED BY
OFFICE OF THE
PROBATE COURT ADMINISTRATOR
STATE OF CONNECTICUT

COMPLIMENTS OF YOUR LOCAL PROBATE COURT

PLEASE NOTE

All Estates Must File an Estate Tax Return in the Probate Court.

An Estate Tax Return must be filed within **six (6) months of death**.

Probate charges are calculated on the value of the estate of a decedent, whether or not the estate is administered in a Probate Court.

Interest accrues on unpaid probate charges:

- if a bill from a Probate Court is not paid within 30 days, or
- if an estate tax return is not filed within six (6) months of the date of death.

See **Step 7** for more details.

Please contact your local Probate Court for more information.

Introduction

The administration of a decedent's estate is a legal process by which any outstanding financial obligations of a deceased person are paid, and the person's property is transferred to those entitled to receive it. The purpose of this booklet is to provide a brief outline of the process and to answer some commonly asked questions. Additional information and forms may be found online at www.ctprobate.gov. Neither this booklet nor the information contained on the website should be seen as a substitute for competent legal advice.

Applications and other forms for decedents' estates are available online at www.ctprobate.gov. Click on "Probate Court Forms." Forms are also available at the Probate Courts.

Why do Probate Courts Become Involved in the Settling of Decedents' Estates?

The probate process serves several functions. First, it provides a mechanism for finding and taking control of the deceased person's assets. It also enables the proper debts, expenses and taxes to be established and paid from the assets. Finally, it determines how the decedent's property should be distributed among those entitled to it. Court oversight of the administration process insures that the estate is administered according to law and provides a forum for the resolution of any dispute that might arise.

How is the Process Begun?

A probate estate is commenced by the filing of a petition in the Probate Court where the decedent was domiciled at the time of death. The petition may be filed by any person who has reason to want the estate administered. Most often this is an heir or beneficiary, but it can also be a creditor seeking payment of a claim against the estate.

A decedent who left a will is known as a "testator." Within 30 days of the testator's death, the will should be brought to the Probate Court along with any "codicils" or amendments to the will. This is usually the responsibility of the "executor," a person named in the testator's will to carry out its terms. Any other person who has possession of a will must deliver the will either to the executor or to the Probate Court within 30 days after becoming aware of the testator's death. There may be criminal penalties for failing to produce a will.

Before its provisions are carried out, the will must be "admitted to probate." This involves a hearing at which the court determines whether the document is the valid last will and testament of the decedent. In the absence of any objection, this is usually a simple process. If a party presents a legal objection to the admission of the will, the court will hear the evidence presented by the parties and determine whether the document meets the legal requirements for a will. If the will is admitted, the court appoints a person to administer the estate, typically the executor named in the will.

A person who dies without a will is said to have died "intestate." In that case a petition is filed seeking the grant of administration and the appointment of an administrator. The petition is usually filed by the decedent's surviving spouse, adult child or other close relative. The law favors the appointment, as administrator, of a close relative such as a spouse or child. The administrator has many of the same duties as an executor named in a will.

Both the administrator and the executor are referred to as the "fiduciary," a term used to denote a person (or persons) holding a position of trust involving the handling of another's property.

What are the Responsibilities of a Fiduciary in the Handling of a Decedent's Estate?

The fiduciary's responsibilities in the administration of a decedent's estate include locating and taking charge of all of the decedent's assets, determining and paying the proper debts, taxes and expenses of the estate, and making distribution of the remaining property to the persons entitled to it. The fiduciary must conduct all estate transactions in

a careful manner, ensuring the preservation of the assets and expediting the final settlement of the estate. The fiduciary is expected to be fair and impartial in all dealings with creditors and beneficiaries.

The fiduciary has the responsibility for filing all necessary documents in connection with the administration of the estate. A step-by-step list of responsibilities is contained within this pamphlet. Forms required to be filed in the Probate Court are available from the court and on the Probate Court website at www.ctprobate.gov. Instructions for their completion are included on many of the forms.

When Should a Fiduciary Seek Professional Assistance?

Many estates are handled by family or friends of the deceased person without the need for legal or other professional assistance. While the Probate Court may provide limited assistance to a fiduciary, it cannot provide legal advice. Some estates may involve complex tax or legal issues, substantial or unusual assets, or disputes among parties. In those instances the fiduciary is well advised to obtain competent legal advice.

Is There a Simplified Procedure for Settling Small Estates with Limited Types of Assets?

A simplified procedure for settling the estate may be available if the total value of the assets to be administered does not exceed \$40,000 and includes no real estate. These limitations do not include property held in such a way that it passes outside of probate, such as by joint survivorship, a beneficiary designation or property held in trust.

This procedure does not result in the admission of a will or the appointment of an executor or administrator and avoids several steps that would otherwise be required in administering an estate. This is known as an affidavit in lieu of administration and is filed on form PC-212.

As with other estates, the assets must be applied to the proper debts and expenses of the decedent before any distribution is made to heirs or beneficiaries. If the debts and expenses equal or exceed the assets, no distribution to heirs or beneficiaries will be made. In the event that there are excess assets after the payment of debts and expenses, and either no will is found or the will's terms are not inconsistent with the laws of intestate succession, then the court may order distribution in accordance with the laws of intestacy without admitting the will to probate.

If there is a will that provides for a distribution that is different from the laws of intestate succession, the court may order a distribution in accordance with the terms of the will only if the decedent's heirs-at-law sign a written waiver of their right to contest the will. In the alternative, the court may order a distribution in accordance with the laws of intestacy if the beneficiaries named in the will consent in writing to such a distribution. If neither the heirs nor the beneficiaries consent to distribution as above, the small estates procedure cannot be used, and the will must be offered for probate.

An affidavit in lieu of administration may be filed by the decedent's spouse. If there is no spouse, any of the decedent's next of kin may file. If there is no next of kin, or if the surviving spouse or next of kin refuses, then any suitable person whom the court deems to have sufficient interest may file the affidavit. In addition to the affidavit, a Connecticut Estate Tax Return, form CT-706 NT, must be filed. Please see Step 7 below.

What if I Don't Know What the Assets Are?

Generally, in order to begin the probate process, it is only necessary to have a general idea of what assets are involved. However, there may be instances in which little or no information is available. In those cases an application may be filed for the appointment of an "estate examiner" with limited authority to obtain information concerning the assets of the estate. The estate examiner could, for example, obtain information about bank accounts and other similar information that would not otherwise be available to a person having no legal authority. This information may be necessary to determine whether the particular matter may be settled as a small estate under the procedures described above. This process may also be used to obtain medical or other information for the purpose of determining whether there is a basis to bring a legal action, such as for wrongful death, on behalf of the estate

What Steps are Required to Administer an Estate?

The following steps outline the major responsibilities of the fiduciary in settling a decedent's estate when the simplified process described above is not used. This outline is not intended to be all-inclusive and cover every situation. There may be additional responsibilities for fiduciaries of certain estates, depending on individual circumstances.

Step 1: File Will and Petition/Administration or Probate of Will, PC-200, Within 30 Days of the Decedent's Death.

A petition for administration or probate of will should be submitted to the Probate Court within 30 days of the decedent's death. It should be accompanied by the original will, if any, and a copy of the death certificate. The petition must contain the names and addresses of all heirs (the decedent's closest relatives) and beneficiaries (those parties who would inherit under the will). In the case of a petition for probate of will, the petitioner must send copies of the petition and will to each person listed on the petition and certify that the copies were provided. The copies may be sent by mail, fax, e-mail or via hand delivery.

There are three options for the hearing on the petition:

- (1) The court may send notice to all parties informing them of the time and place of the hearing.
- (2) If all those entitled to notice file written waivers of their right to notice, and the court does not believe a hearing is necessary, then the court may enter a decree without a formal hearing and without the parties being present.
- (3) The court may follow the "streamline" notice procedure under which all parties are notified that they have the right to a hearing if requested by a specified date. If a request is made, the court will send notice and hold a hearing. If no hearing is requested, the court may, without the presence of the parties, issue a decree on or after the decree entry date specified in the notice.

At the time the will is admitted to probate, the executor named in the will is formally appointed. In an intestate estate, an administrator is appointed.

The executor or administrator will generally be required to provide a probate bond in an amount determined by the court. However, the court may dispense with the requirement of a bond if one of these conditions is met:

- (1) The will excuses bond.
- (2) The assets of the estate are less than \$20,000, or the amount of the estate that is not restricted by Probate Court order is less than \$10,000.
- (3) All heirs or beneficiaries waive the requirement of a bond.

Step 2: Take Possession of the Decedent's Property.

The first responsibility of the fiduciary is to gather together the assets of the estate and place them under his or her control. For example, bank accounts should be transferred from the decedent's name into an estate account. Stock certificates need not be registered in the name of the estate, although the transfer agents should be notified to send dividends in care of the fiduciary. Utility companies need to be notified of the decedent's death, and accounts that will remain open should be transferred to the estate. Any dwellings, seasonal homes, etc. should be secured, protected from the elements and insured.

The fiduciary must take great care to keep the estate's income, assets and expenses separate from his or her own.

The fiduciary should use particular care in dealing with any firearms owned by the decedent. The sale or transfer of firearms is highly regulated and complex. Firearms may be sold or transferred only to persons who are legally eligible to receive them. Transfers of handguns require written application to, and authorization from, the Department of Emergency Services and Public Protection. The department's Special Licensing and Firearms Unit may be reached at (860) 685-8290, or 1-888-335-8438. Long guns may be transferred following the above procedure. Alternatively, they may also be transferred to a person holding a valid firearms eligibility certificate or permit, following a national instant criminal background check performed by a federally-licensed firearms dealer.

Executors and administrators should also take note that handguns may be legally transported only by an individual holding a valid Connecticut permit to carry a pistol or revolver. An executor or administrator should avoid transporting such weapons unless he or she has the necessary permit.

If the decedent owned an assault weapon or one or more large capacity magazines, special rules apply. Generally, assault weapons and large capacity magazines may not be sold or transferred in Connecticut except to a licensed firearms dealer. They may, however, pass to heirs or beneficiaries under the provisions of a will or the laws of intestacy. The executor or administrator must obtain the approval of the Probate Court for the disposition. In addition, the recipient must apply to the Department of Emergency Services and Public Protection for a certificate of possession for an assault weapon and/or declare any high capacity magazine to the department.

Step 3: If the Decedent Owned Real Estate, File Notice for Land Records/Appointment of Fiduciary, PC-251, Within Two Months of Appointment as Fiduciary.

A Notice for Land Records/Appointment of Fiduciary must be filed with the town clerk in each town in Connecticut where real estate owned by the decedent is located.

Step 4: File Inventory, PC-440, Within Two Months of Appointment as Fiduciary.

The fiduciary must file an inventory of the estate with the Probate Court within two months of appointment as fiduciary. In general, the inventory should list any property the decedent owned in his or her own name, including such things as real estate, bank accounts, securities, motor vehicles, household furnishings and personal effects. It should include life insurance policies only if payable to the decedent's estate. Partnership property and any property owned with other persons not in survivorship should also be listed.

The inventory should not include property held in such a way that it passes outside of probate, such as by joint survivorship or beneficiary designation of property held in a trust.

All property must be valued on the inventory at its fair market value at the time of death. It is the responsibility of the fiduciary to determine these values through inquiry and his or her own experience. With respect to real estate, the value may be determined in one of several ways:

- (1) A written appraisal
- (2) A comparative market analysis by a real estate agent
- (3) The assessed value from the local tax assessor, adjusted to reflect 100 percent of the fair market value
- (4) The actual sale price obtained in an arm's-length transaction within six months following the decedent's death

The legal description of any real estate should be included as it appears in the most recent deed, and a copy of the deed may be attached to the inventory. The balance of any mortgage on real estate and the name of the person or corporation to whom the debt is owed must be included. Itemized lists of valuable personal property, such as jewelry and antiques, should also be included. Household furnishings and personal items need not be itemized unless of particular value. Articles specifically bequeathed in the will should be listed individually.

The fiduciary is required to send copies of the inventory to each party and attorney involved with the estate and must certify on the inventory that those copies have been provided. The copies may be sent by mail, fax, e-mail or via hand delivery.

Step 5: Obtain Cash for Estate Administration as Needed.

The fiduciary should anticipate the cash needs of the estate to pay for administration expenses, taxes, claims and bequests. He or she has the authority to convert into cash any personal property not specifically bequeathed but must obtain permission from the

Probate Court to sell, mortgage or otherwise convey real estate, unless specifically authorized to do so under the terms of the will. When personal property is to be sold, the fiduciary (if the fiduciary is not named in the will as executor or is not a family member) must send a copy of the inventory to all interested parties, with a notice of intent to sell. They then have the right to object to the sale within five (5) days of the receipt of the notice. (The court may waive this requirement if an expeditious sale is necessary.) A hearing will be held to determine the advisability of the requested sale. If parties interested in the estate do not want certain assets sold, cash may be advanced to the estate to pay estate obligations.

The surviving spouse or other dependent family members may apply to the Probate Court for a support allowance from the estate funds during the period of settlement of the estate. The form is Application and Decree for Support Allowance, PC-202.

The surviving spouse or family of the decedent may be allowed to use the decedent's automobile while the estate is being settled, provided the decedent maintained the automobile as a family car. Permission to use the vehicle can generally be obtained from the court by writing to the court. The fiduciary need not register the automobile until the expiration of the registration in force at the time of the decedent's death.

Step 6: Follow Statutory Procedures for the Payment of Claims Against the Estate, and File Return of Claims and List of Notified Creditors, PC-237, at Required Time.

“Claims” refer to debts incurred during the decedent’s lifetime and unpaid at the time of death. It is the fiduciary’s responsibility to determine the validity of any claims presented to the fiduciary.

Within 14 days after the first fiduciary's appointment, a newspaper notice will be placed by the Probate Court notifying the estate's creditors of the decedent's death, the creditors' obligations to present their claims promptly, the fiduciary's name and the address where claims are to be presented. Creditors generally have at least 150 days to present their claims to the fiduciary. It should be noted that this 150-day period does not preclude later presentation of a claim. This period may be reduced using an optional procedure by which the fiduciary sends certified mail notice to any creditors informing them that they must present their claim by a specified date that is at least 90 days from the date of the notice and that their failure to do so will result in their claim being barred. The form to use is Notice to Creditors to Present Claims, PC-234.

When a claim is presented it is the responsibility of the fiduciary to determine its legal validity and notify the creditor whether the claim is allowed or rejected, in whole or in part. If there is doubt regarding the validity of a claim, legal assistance should be sought. Within 60 days after the end of the 150-day period, the fiduciary must file with the court a Return of Claims and List of Notified Creditors, PC-237, reporting all claims presented and the extent to which each was allowed or rejected.

A fiduciary who distributes estate assets in good faith following the expiration of the 150-day period will not be liable to creditors who present their claims following distribution. However, beneficiaries may be liable for legitimate claims properly brought after distribution.

In addition to claims, the estate will also be responsible to pay certain expenses that arise after the decedent's death. Funeral expenses take priority over virtually all other

expenses for which the estate is responsible. "Administration expenses" include such things as statutory Probate Court charges, attorney's fees, fiduciary's fees, the cost of legal notices and any expenses related to maintenance of the decedent's property incurred after the decedent's death. In the event that the estate is insufficient to pay all proper expenses, certain of them will take precedence over others. Before paying claims and expenses, the fiduciary should use care to determine that the estate is sufficient to pay them in their proper order of priority.

If the assets of the estate are not adequate to pay the debts, the estate may be settled as insolvent. The procedure for settling an insolvent estate is substantially different from that in a solvent estate, and competent legal advice should be obtained.

Step 7: File Tax Returns and Pay Applicable Taxes.

What taxes may apply?

Every estate must file a Connecticut estate tax return. That process is discussed in more detail below. Other taxes may be applicable to some, but not all, estates. Some of them will be briefly mentioned, but they are beyond the scope of this booklet.

The federal estate tax is applicable to larger estates. For deaths occurring in 2013, a return must be filed if the gross estate plus adjusted taxable gifts and the specific exemption is more than \$5,250,000. Federal estate taxation is extremely complex and is beyond the scope of this publication. If a federal estate tax return is required or if there is any doubt about whether such a return is required, professional advice is strongly recommended.

The estate may also be required to file state and federal estate income tax returns, depending upon the amount of income earned by the estate. In addition, the fiduciary may be required to file a final personal income tax return for the decedent. Once again, these are beyond the scope of this booklet and appropriate professional advice should be sought.

The estate may also be required to pay local property taxes on real estate and motor vehicles.

This publication focuses on the Connecticut estate tax, which applies to the estates of all decedents dying on or after January 1, 2005. Deaths prior to that date are subject to the Connecticut succession tax.

Which estates must file a Connecticut estate tax return?

A Connecticut estate tax return must be filed in connection with the estate of each decedent dying on or after January 1, 2005, even if the estate is not administered in a Probate Court. This includes estates of Connecticut residents, as well as non-residents who died owning real estate or tangible personal property located in Connecticut.

What form of return must be filed and where can I obtain that form?

A simplified form of return known as the CT-706 NT may be filed in some estates in which no estate tax will be due. This form may be used if the Connecticut taxable estate does not exceed the exemption amount. In all other instances, form CT-706/709 must be filed.

For dates of death between January 1, 2005 and December 31, 2009, the exemption amount was \$2 million. If the death occurred between January 1, 2010 and December 31, 2010, the exemption amount was \$3.5 million. On and after January 1, 2011, the exemption amount was reduced once again to \$2 million.

Forms may be obtained from the Department of Revenue Services website at www.ct.gov/drs.

When must estate tax returns be filed?

For deaths occurring between January 1, 2005 and December 31, 2009, the estate tax return is due nine months following the date of death. If the date of death is on or after July 1, 2009, the return must be filed within six months following the date of death.

Can the time for filing be extended?

The Probate Court may extend the time to file a CT-706 NT, provided that the request for extension is filed before the due date of the return. The court may allow one extension of up to six months in length. An extension of time to file a CT-706/709 may only be obtained from the Department of Revenue Services.

Where are returns filed?

A CT-706 NT is filed with the Probate Court for the district in which the decedent resided at the time of death. If the decedent was a non-resident, the CT-706 NT may be filed in a probate district in which the decedent owned real estate or tangible personal property. The CT-706 NT need not be filed with the Department of Revenue Services.

If a CT-706/709 is required, it must be filed both in the Probate Court and with the Department of Revenue Services. All tax payments must be made directly to the Department of Revenue Services.

Who must sign and file the return?

The executor or administrator of the estate must sign and file the return. If there is no executor or administrator, any person having possession of any of the decedent's property may file the return.

Are all estates required to pay tax?

No. Generally only those estates that exceed the exemption amounts discussed above will be liable to pay estate tax.

Where can I find out more information about the Connecticut estate tax?

More information can be obtained from the Department of Revenue Services website at www.ct.gov/drs.

How does the Connecticut estate tax relate to Probate Court fees?

Probate fees are established by statute. The amount on which the fee is based is the greater of the amount reported on the inventory, the gross estate or the Connecticut taxable estate for estate tax purposes. This means that in most cases the probate fee is determined with reference to amounts reported on the CT-706 NT or CT-706/709.

Whichever amount is applicable in a given estate is applied to a formula provided by statute to determine the actual probate fee.

Interest may be added to probate fees in certain instances. One such instance is when the estate tax return is not filed by the due date, including any extension. In that case, interest will be added to the probate fee at the rate of 0.5% per month beginning 30 days after the due date of the estate tax return.

Step 8: File Final Financial Report of Account, Usually within 12 Months of the Decedent's Death.

Every executor or administrator must file a financial report or account with the court when the administration of the estate is complete, or when the executor or administrator seeks to resign or is removed by the court.

In most cases, the simpler financial report, PC-246, can be used. However, the more detailed accounting, PC-241 or 242, will be required in certain instances, such as where the will establishes a trust under which the persons receiving the income of the trust differ from the persons who will receive the ultimate distribution of the principal. An accounting is also required if the will establishes a life use in property, or if a surviving spouse elects to take the statutory share. See section 38.1 of the Probate Court Rules of Procedure, which are available online at ctprobate.gov.

Whichever form is used, the fiduciary must provide copies to each party and attorneys involved with the estate and must certify on the financial report or account that the copies have been provided. The copies may be sent by mail, fax, e-mail or via hand delivery.

The Probate Court will hold a hearing on the financial report or account to allow the beneficiaries or any other interested party to ask questions about, or object to, the manner in which estate funds were managed.

In the alternative, the court may provide the parties with a "streamline" notice as explained in section 8.6 of the Probate Court Rules of Procedure. This notice will inform the parties of the right to a hearing on the matter if requested by a given date. If no request is received, the court may proceed to approve the financial report or account. If requested by a party, a hearing will be held.

If all parties interested in the estate sign an Acceptance and Waiver Re: Final Account, PC-245, indicating that they have received and reviewed a copy of the final financial report or account and waive their right to a hearing, the court may waive the formal hearing and act on the account without the parties having to appear.

If the estate remains open for longer than one year, the executor or administrator is required to file a status update with the court. The update should be filed within three months following the first anniversary of appointment and annually thereafter, if no interim or final financial report or account has been filed. It should include the approximate amount of any distributions already made, the approximate amount remaining on hand and the reasons that administration has not been completed.

The executor or administrator must maintain complete records concerning the management of the estate. No financial records should be destroyed until the final financial report or account has been approved by the court, and the appeal period has

passed or any appeal is concluded. See section 36.13 of the Probate Court Rules of Procedure.

Step 9: Distribute Assets to Beneficiaries.

A final financial report or account must report all distributions made to heirs or beneficiaries, as well as distributions that are proposed to be made. When the final financial report or account is approved, the court will order the fiduciary to distribute the remaining assets of the estate according to the approved distribution.

Step 10: File Affidavit of Closing of Estate, PC-213.

The affidavit of closing is used to report receipts and disbursements that occur after the filing of the final financial report or account, as well as the disposition of any reserve shown on the financial report or account.

If the court directs the fiduciary to file an affidavit of closing, it should be filed within 30 days following the distribution of all assets. For all practical purposes, this is the executor or administrator's final act as fiduciary.

If a probate bond was required, the court will send the surety company a certificate stating that the fiduciary has complied with all orders of the court relating to the settlement of the estate and terminating the probate bond.

What Can I Do If I Disagree with a Decision of the Court?

Probate Appeals

Any order, denial or decree of a Probate Court may be appealed by an aggrieved person. Generally, a person is considered to be aggrieved if he or she has a legally protected interest in the matter. Probate appeals are taken to the Superior Court. It is important to note that appeals must generally be taken within 30 days of the date that the order, denial or decree was mailed. Failure to meet the statutory time frame may result in the loss of the right of appeal. Therefore, prompt action is required.

It should also be noted that a probate appeal in the Superior Court is a more formal and legally technical proceeding than is typically the case in the Probate Court. It is strongly recommended that any party considering appeal immediately seek professional legal advice.

Glossary

PROBATE – Broadly, a characterization of the functions of the Probate Court, whether it be the probate of a will, the approval of the financial reports or accounts of an administrator or executor of a decedent's estate, or any other judicial act within the province of the court, including guardianships, conservatorships and the like.

DOMICILE – A person's primary and permanent place of residence.

WILL – A written declaration of a person's wishes concerning the distribution of property standing in his or her name after death, executed in accordance with specific legal formalities.

CODICIL – An amendment or addition to a will, executed using the same legal formalities required for a will.

TESTATE – Referring to the estate of a deceased person who leaves a will at death.

INTESTATE – Referring to the estate of a deceased person who dies without leaving a will.

FIDUCIARY – One who holds property in a position of trust for another, such as an executor, administrator, trustee, guardian or conservator.

EXECUTOR – A person named in a will to manage and settle an estate and to carry out the directions and mandates of the decedent.

ADMINISTRATOR – A person who has been named by the Probate Court to administer and settle the estate of a decedent who dies without leaving a will. The estate will be settled in accordance with the laws of descent and distribution, which are also known as the laws of intestacy.

TRUST – Property, real or personal, held by one party for the benefit of another.

GUARDIAN – A person given the power and duty by a Probate Court to manage the property or provide for the care of the person of a minor child or person with intellectual disability.

CONSERVATOR – A person named by a Probate Court to supervise the affairs of another person who is incapable and who needs assistance in managing his or her affairs or caring for himself or herself.

PROBATE BOND – A promise by a fiduciary, guaranteed by a third party known as a surety, to replace any funds up to the amount of the bond to fulfill the faithful performance of his or her duties. Often, the surety is an insurance company.

REAL ESTATE – Real estate such as a home, land or farm, including the ownership of a condominium unit.

PERSONAL PROPERTY – Property not classified as real estate, such as bank accounts, shares of corporate stock, bonds, automobiles, household furnishings and personal effects.