

South Carolina Probate Guide

When researching estate administration and probate for the first time, the hot topic you will notice is avoiding probate through extensive estate planning. While these resources certainly provide valuable information, they will not help you once you inevitably reach the probate court for estate administration. This guide intends to help highlight the duties of the personal representative to help you make an informed decision on whether you need to retain an attorney to assist with your estate administration.

The process of estate administration earns its reputation of being frustrating and lengthy process because of its very nature of dealing with bringing organization to the decedent's assets and debts during an emotional time of your life. While there is simply no way around dealing with a disorganized estate, it can help to reduce the difficulties of this process by having clear directions and understanding what you, as a personal representative, are actually trying to accomplish. This guide intends to help you reach an understanding of your purpose in administering the estate while providing a concise breakdown of your responsibilities to better understand probate in South Carolina.

Probate Basics

Probate is an official process overseen by the court to ensure the proper maintenance of the decedent's assets, the payment of creditors of the decedent, and finally, the transfer of the decedent's assets to the estate's beneficiaries. These actions are commonly referred to as the "administration of the estate", which is where the bulk of the personal representative's duties occur. In addition to the actual administration of the estate, there is also the opening and closing of the estate. Each of these stages of probate can be incredibly adversarial or go by without issue. It is important to understand each stage to effectively fulfill your duties and responsibilities as personal representative.

Before beginning the probate process, you should first familiarize yourself with the probate forms. While these forms can easily become frustrating, they do provide incredible value as they allow for anyone to successfully complete probate even without any prior experience in the field. With that said, the process can still become quite confusing for first timers.

The most important forms are the following five, which are mandated by the South Carolina Supreme Court:

- (1) Form #300ES – Application (Informal) or Petition (Formal) for Probate of Will or Appointment;
- (2) Form #350ES LF – Inventory and Appraisement (Long Form);
- (3) Form #350ES SF – Inventory and Appraisement (Short Form);
- (4) Form #361ES – Accounting; and

(5) Form #371ES – Statement of Creditor’s Claim.

In addition to these five forms, the South Carolina Court Administration has also designated a series of discretionary forms that are frequently used in the administration of an estate.

I. Opening of an Estate

If you believe that you are the proper party to serve at personal representative of the estate, you should first review the South Carolina Code to confirm whether you are the proper party. South Carolina Code § 62-3-203(a) stat that whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

- (1) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;
- (2) the surviving spouse of the decedent who is a devisee of the decedent;
- (3) other devisees of the decedent;
- (4) the surviving spouse of the decedent;
- (5) other heirs of the decedent regardless of whether the decedent died intestate and determined as if the decedent died intestate (for the purposes of determining priority under this item, any heirs who could have qualified under items (1), (2), (3), and (4) of subsection (a) are treated as having predeceased the decedent);
- (6) forty-five days after the death of the decedent, any creditor complying with the requirements of Section 62-3-804(1)(b);
- (7) four months after the death of the decedent, upon application by the South Carolina Department of Revenue, a person suitable to the court.
- (8) Unless a contrary intent is expressed in the decedent's will, a person with priority under subsection (a) may nominate another, who shall have the same priority as the person making the nomination, except that a person nominated by the testator to serve as personal representative or successor personal representative shall have a higher priority than a person nominated pursuant to this item.

After you have confirmed that you are the proper party, you should begin to review the information requested by Form #300ES referenced above and then begin filling in the information requested including any documentation required. In some counties, the court will have a packet and checklist, which can be a very helpful resource in submitting the proper

paperwork. Typically, you will need to submit a death certificate and the last will and testament (if applicable) to open the estate; however, rules can vary slightly from county to county.

The funeral home will often have a certified death certificate, which you can use to open the estate, but you will often need additional death certificates to use throughout the course of the estate administration. These can be requested from South Carolina DHEC and are typically delivered between five to seven business days.

One aspect of the application that takes some prior knowledge or understanding is the selection of the application for informal versus the petition for formal. Formal proceedings will typically occur when two parties apply to be appointed as personal representative. In this situation, you will have higher duties of notice and be required to appear before the court for a hearing to determine the personal representative.

After you have identified whether you have priority to serve as personal representative, whether to apply for informal or petition for formal appointment, and filled out Form #300ES including the required documents, you can move on to submitting everything to the court. Once all of the appropriate documents are properly submitted to the court, the Judge will often make an appointment of personal representative within a matter of days up to several weeks depending on the venue. The appointment will include certificates of appointment, which are necessary documentation for many of your tasks as the personal representative.

II. Administration of an Estate

Following your appointment as personal representative, your focus will then shift to the assets and debts of the personal representative. With this in mind, you should immediately prepare your notice to creditors to be submitted “in a newspaper of general circulation in the county”. South Carolina Form #370ES includes all the necessary information and instruction required to be included in this advertisement. The timing of this notice is critical because the estate may be closed at the earlier of one year from the date of death or eight months following the first publication of the notice to creditors. You should also use Form #305ES to send notice to the heirs and devisees that you have been appointed as the personal representative. This is required to be sent within thirty days of your appointment.

Assets:

The personal representative must then begin locating all of the decedent’s real and personal property, assets, financial accounts, and any other belonging to report to the court through the inventory and appraisal. The most important assets to identify with specificity are accounts in the name of the decedent and real property evidenced by titles in the name of the decedent. These must be physically transferred out the decedent’s name and would require reopening the estate to transfer to beneficiaries should it be missed during the estate administration. Outside of accounts and titled property, personal property, courts typically accept the inventory and

appraisal with property generalized in categories such as furniture, clothing, artwork, jewelry, kitchenware, tools, etc. and given approximate values.

Debts:

During the time following the notice to creditors, you will begin to receive notices of creditor claims. Creditors must submit these claims to within the time period of the earlier of eight months from the notice to creditors or one year from the decedent's date of death. If the creditor misses this time period, the creditor will lose its right to payment of the debt. This does not affect secured creditors.

When receiving these claims, you should ensure that you keep note of the creditor and the amount of the claim, but do not pay any of these until after the creditor's claim period has expired. These claims received require a response "within sixty days after the presentment of the claim, or within fourteen months after the death of the decedent, whichever is later, the personal representative must serve upon the claimant a notice stating the claim has been allowed or disallowed in whole or in part."

While you do have the option to allow or disallow at the latest time defined above, it will typically benefit you to begin addressing these claims as soon as the creditor's period has expired. This will benefit you by allowing you to reply to claims with full knowledge of the amount owed to creditors and the value of the estate's assets.

Taxes and Expenses:

Finally, while not necessarily creditors, the personal representative must pay final taxes and expenses in the estate administration for the decedent.

III. Closing an Estate

In closing the estate, the personal representative should prepare the accounting (Form #360ES), the petition for settlement (Form #412ES), the notice of right to demand hearing (Form #416ES), and the proposal for distribution (Form #410ES). Filing these final forms with the court and providing to the interested party will have the estate in a position to close.

Once the estate is settled, the estate administrator may begin distributing the assets to the heirs or devisees. If there is a will, the executor should follow the decedent's wishes. If there is no will, then the South Carolina default rules will apply and be distributed accordingly.

Frequently Asked Questions about Probate

How long does Probate last?

Probate will take at least eight months when you file the notice to creditors in a timely manner; however, the process can take longer depending on different elements such as difficulties in identifying assets, disputes between interested parties, litigation with a third party, or any other number of problems that may occur.

How much does probate cost?

The estate fees in the probate court begin at \$25 and go all the way to \$845 plus a fraction of one percent of the estate value. Although the fee structure within the probate court is clear, there are many factors that can take an estate with apparent value to consumed by debt depending on the number of creditors. Additionally, fees can accrue by use of attorneys, accountants, or other professionals during the estate administration.

Do I need a will to go through Probate?

Wills are beneficial in the administration of the estate but are not required. If a person dies intestate, meaning without a will, the estate will pass to the person's heirs based on South Carolina law.

Do you have to have an attorney represent you through probate?

An attorney is not required, but it can be valuable where the estate has enough value to cover the expenses. Since probate is a court proceeding and it may be necessary to file documents such as summons or petitions with the court, it might be beneficial to have an attorney handle the process.

Can you avoid Probate?

Avoiding probate is a commonly used phrase by many estate planning attorneys, but to say you can avoid probate is misleading. Legally, every decedent's estate must go through the probate court to address creditors, taxes, and determine whether any assets can be distributed to beneficiaries. When an estate planning attorney refers to avoiding probate, it really means limiting probate.

Estate planners accomplish this limiting of probate by avoiding the need to engage in tedious property transfers under the supervision of the court by holding all of your titled property and accounts in a trust or in joint ownership. This ensures that property immediately transfers at death rather than at the approval of the court. Additionally, estate planning can give much more clear instructions to the distribution of property rather than following the state law approach.

In addition to providing simplicity in your responsibilities as the personal representative, holding property in a trust will typically keep the value of the estate under \$25,000.00. Estates under this

amount have simplified procedures that avoid much of the responsibilities that a personal representative would typically have.