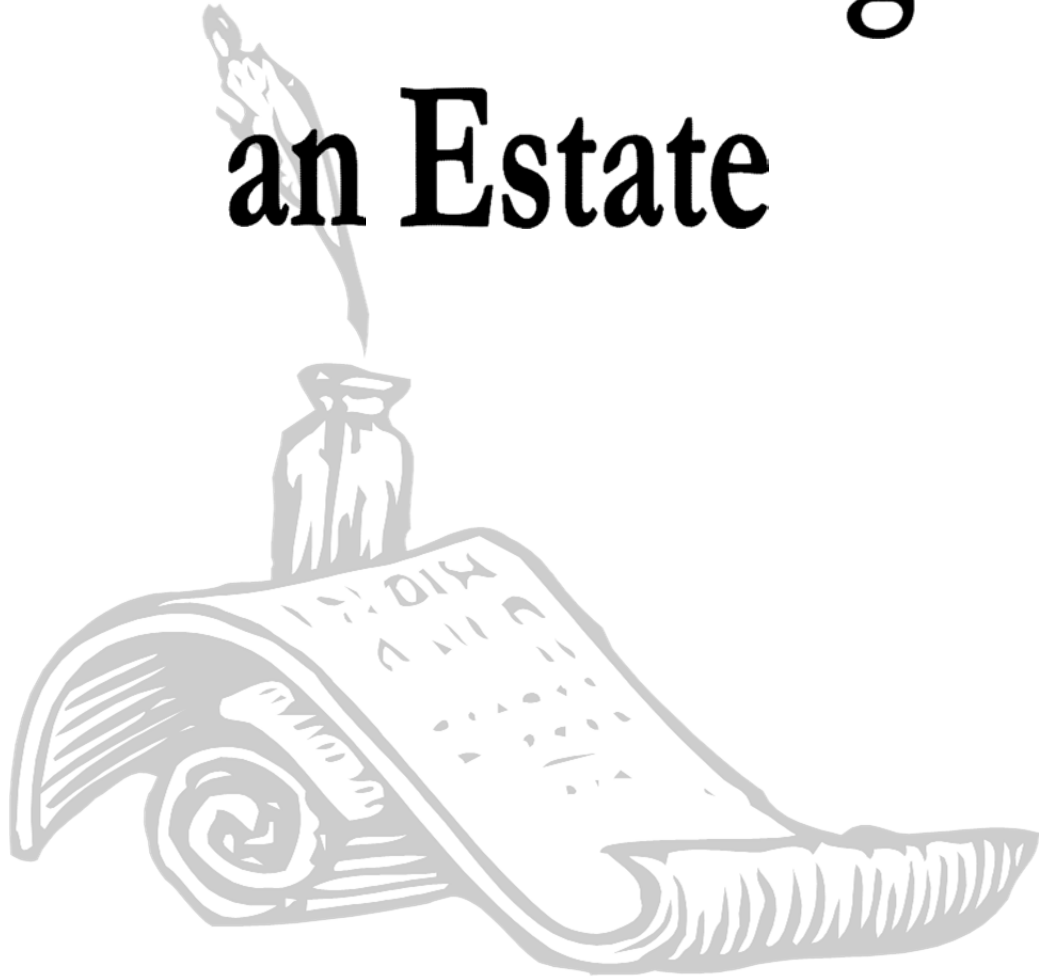


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# Administering an Estate



NH Judicial Branch  
Circuit Court Administrative Office and  
Electronic Filing Center

Updated July 01, 2021

# Table of Contents

<b>INTRODUCTION .....</b>	<b>3</b>
<b>THE EXECUTOR AND ADMINISTRATION .....</b>	<b>4</b>
<b>THE ESTATE .....</b>	<b>4</b>
<b>SPECIAL RIGHTS OF A SURVIVING SPOUSE .....</b>	<b>4</b>
<b>NEW HAMPSHIRE INTESTACY STATUTE .....</b>	<b>5</b>
<b>GETTING STARTED .....</b>	<b>6</b>
<b>TYPES OF ADMINISTRATION .....</b>	<b>6</b>
<b>WAIVER OF FULL ADMINISTRATION .....</b>	<b>6</b>
<b>REGULAR ADMINISTRATION .....</b>	<b>8</b>
<b>AFTER YOUR APPOINTMENT .....</b>	<b>9</b>
<b>THE INVENTORY .....</b>	<b>9</b>
<b>MANAGING THE ESTATE .....</b>	<b>9</b>
<b>DEBTS .....</b>	<b>9</b>
<b>REAL ESTATE .....</b>	<b>10</b>
<b>TAXES .....</b>	<b>10</b>
<b>CLOSING THE ESTATE .....</b>	<b>10</b>
<b>COMPENSATION .....</b>	<b>11</b>
<b>TIMELINE .....</b>	<b>11</b>
<b>ESTATE ADMINISTRATION CHECKLIST .....</b>	<b>12</b>
<b>GLOSSARY .....</b>	<b>16</b>
<b>FORMS .....</b>	<b>18</b>
<b>DRA LEGACY &amp; SUCCESSION INFORMATION .....</b>	<b>18</b>
<b>PUBLIC SERVICES PROVIDED BY THE NH BAR ASSOCIATION .....</b>	<b>19</b>

This booklet is based on NH law and is issued for general information only. It is not a substitute for specific legal advice.

## INTRODUCTION

This booklet is designed to help you carry out your duties as an executor or administrator of an estate. The information in this booklet is based on New Hampshire law in effect at the time of publication and is issued as a public service for general information only. It is *not* a substitute for legal advice. Rather, it is intended to help you recognize when you need legal advice and to help you understand the advice you receive. There are many circumstances that may arise which are not covered here and, in most instances, it is wise to consult an attorney. If you feel you need the advice of an attorney and don't know whom to call, the Lawyer Referral Service of the New Hampshire Bar Association can help. Call (603) 229-0002 for more information.

In New Hampshire, the administration of a decedent's estate comes under the jurisdiction of the Circuit Court Probate Division and a list of those courts is provided in the back of this booklet. Also included are links to the forms used by the Circuit Court and the state Department of Revenue Administration (DRA), a **Timeline** which gives some of the deadlines you should be aware of when administering an estate, and a basic **Glossary** of terms. (Italicized terms in the text are defined in the **Glossary**.) In addition, the **Estate Administration Checklist** will give you a guide to the information and documents you will need to carry out the administration of the estate.

## THE EXECUTOR AND ADMINISTRATOR

As an *executor* or *administrator*, it is your responsibility, under the Circuit Court Probate Division's supervision, to ensure that the debts and assets of the estate are managed and distributed in accordance with New Hampshire law and the decedent's wishes if expressed in a will.

An executor is a person named by a decedent in a will to administer an estate (sometimes referred to as a testate estate). An administrator is a person eligible under New Hampshire law, and who is approved by the Circuit Court, to administer an estate when the decedent leaves no will (sometimes referred to as an intestate estate) or when the executor(s) named in the will cannot serve. Whether you are an executor or an administrator (sometimes also referred to as a fiduciary), you must exercise the highest duty of good faith and candor in carrying out the administration of the decedent's estate.

Your responsibility as executor or administrator is to perform certain tasks to see that the estate is properly probated. The assets of the decedent's estate must be collected and its debts paid, if sufficient funds exist in the estate. The assets must be managed while awaiting approval to distribute them and estate funds must be kept separate from any other funds by opening an account in the name of the estate and depositing all estate funds and paying all estate bills from that account. The valuation you provide for estate assets in the inventory is important because it establishes the tax basis for federal and state death taxes and for heirs or legatees who inherit the property. You must inform all persons with any legal interest in the estate, including creditors and potential heirs, of any matters that might affect their interests.

While you do not need to be an attorney to serve as an executor or administrator, you should always consult an attorney when issues arise which you are not comfortable handling. If consulted for a proper purpose, and with court approval, attorneys' fees are payable out of the estate. The court's Information Center can provide assistance in giving general advice and providing necessary forms, checklists and guidance regarding electronic filing of cases, but cannot give legal advice. You can reach the Information Center by calling 1-855-212-1234 during regular business hours, Monday through Friday, 8am to 4pm.

If, for whatever reason, you do not properly perform your duties as executor or administrator, the Circuit Court Probate Division will appoint a new executor or administrator to complete the administration of the estate. If you are unable or unwilling to serve, you may decline by filing a "Declination" form (NHJB-2123-Pe). The court will then appoint a substitute executor or administrator pursuant to the decedent's instructions, or upon petition by other interested parties.

## THE ESTATE

The decedent's estate consists of any and all *real* and *personal property*, whether owned alone or in common with others. If, however, real or personal property is held as a "joint tenancy with right of survivorship," it is not part of the probate estate since title passes at death directly to the surviving joint tenant. The same principle applies to other jointly held property, such as joint bank accounts. The proceeds of a life insurance policy also pass directly to the *beneficiary*, and are not part of the decedent's probate estate. If any of the decedent's property is held in a *trust*, then you should consult an attorney to determine whether, or to what extent, the trust is involved in the probate process. Even if there are no assets, but there is a will, you must file the will, any *codicils* (amendments), and a death certificate with the Probate Court within thirty (30) days of the date of death. If the will was made out of state, a "Statement of Counsel as to Propriety of a Foreign Will/Codicil to be "Admitted into Probate" (NHJB-2146-Pe) must be filed with the Circuit Court.

The **Estate Administration Checklist** at the end of this booklet will help you to determine the assets and debts of the estate, as well as to gather necessary information for the probate process.

## SPECIAL RIGHTS OF A SURVIVING SPOUSE

You should be aware of special rights of a surviving spouse in the estate administration process. In some instances, a surviving spouse may receive a greater share of the estate than the will would have provided. A surviving spouse may waive the will provisions and his/her *homestead rights* and instead take his/her share of the estate as set forth by law. The surviving spouse must make this choice within six months of the executor's appointment. In an intestate estate, the surviving spouse's share is set forth by statute and is generally anywhere from half of the estate to the entire estate after payment of debts and expenses.

## NEW HAMPSHIRE INTESTACY STATUTE

The intestacy law (also called the law of descent and distribution, NH RSA 561) governs the distribution of property when the decedent dies without a will. Under state law, the order, or priority, of distribution of all property of a decedent after debts of the estate are paid, is as follows:

If there is a surviving spouse:

1. the surviving spouse receives the entire estate if the decedent had no surviving parent or child;
2. the surviving spouse receives the first \$250,000 of the estate plus one-half the balance if there is a surviving child of both the decedent and the surviving spouse, and there are no other children of the surviving spouse who survive the decedent;
3. the surviving spouse receives the first \$250,000 plus three-fourths of the balance if there is a surviving parent of the decedent, but no surviving child;
4. the surviving spouse receives the first \$150,000, plus one-half of the balance of the estate if there is a surviving child of both the decedent and the surviving spouse and the surviving spouse has a surviving child who is not the child of the decedent;
5. the surviving spouse receives \$100,000 and one-half of the estate, if the decedent left children who are not also children of the surviving spouse.

If there is not a surviving spouse or if parts of the intestate estate still have not been distributed under the above formula, the remainder of the estate passes in the following order:

6. to the children of the decedent, in equal shares;
7. if the decedent has no surviving children, then to the parent(s) of the decedent;
8. if the decedent has no surviving children or parent(s), then to the surviving brothers and sisters of the decedent in equal shares and to the children of the decedent's deceased brothers and sisters by representation. (Representation means that these children share equally the portion their parent would have received had their parent survived the decedent.)
9. if the decedent has no surviving children, parent(s), or brothers or sisters, or children of deceased brothers or sisters then, to grandparent(s);
10. if there are no surviving children, parent, children of a parent, or grandparent, but there are children of decedent's grandparent who survive, one-half of the estate passes to the children of the paternal grandparent who are not beyond the fourth degree of kinship to the decedent; the other half passes to the children of the maternal grandparent who are not beyond the fourth degree of kinship; provided, however, that if there are no children of the decedent's grandparent within the fourth degree of kinship to the decedent on either the paternal or maternal side, the entire estate passes to the issue on the other side who are not beyond the fourth degree of kinship to the decedent.

No portion of a decedent's intestate estate shall pass to any person who is of the fifth or greater degree of kinship to the decedent. If no one is available to take the estate under the provisions of the intestacy law, the intestate estate passes to the State of New Hampshire by a process called "escheat."

Children born of unwed parents inherit through their mother, but can also inherit through their father if the father acknowledges paternity or is found to be the father through a court proceeding.

## **GETTING STARTED**

You must file your probate case through the Electronic Filing System for the Circuit Court Probate Division. The Electronic Filing System is a computer program you can access with any computer connected to the internet. If you do not own a computer, you can go to any Circuit Court Probate, District or Family Division in the state (except for the Colebrook court) and use a public computer kiosk located in the lobby to file your case. There is no fee for use of the court computer. The Electronic Filing System will guide you through the filing of all case initiating documents by asking you a series of questions. After you have answered each question the system will produce a completed document and will explain how to finalize it and submit it electronically to the court for filing. There are filing fees for all the types of estate administration described below. These fees can either be paid, electronically, at the time of filing, by credit card or you may go to the court to pay the filing fee in person after you have filed the case initiating documents electronically. The lists of forms included under each section will help you get started. There will be additional forms required as the administration progresses. A link to court forms and other helpful resources is available at: <https://www.courts.state.nh.us/probate/estate.htm>.

To get started in the Electronic Filing System go to: <https://www.courts.state.nh.us/nh-e-court-project/electronic-services.htm> on the NH Judicial Branch website. For self-represented filers, after you sign-up with the Electronic Filing System, it guides you to the forms you will need to file. Many of the forms are generated automatically after you answer a series of questions.

## **TYPES OF ADMINISTRATION**

### *Waiver of Full Administration*

Waiver of Full Administration is a much simpler process than full estate administration. It is available if certain circumstances exist. The Electronic Filing System will ask you questions when you file the Petition for Estate Administration which will determine if the estate qualifies for Waiver of Full Administration. An estate will qualify under the following circumstances (with or without a will):

1. Whenever a decedent dies testate and an individual is named in the will as the sole beneficiary of the decedent's estate and is appointed to serve as executor
2. Whenever a decedent dies testate and all individuals named in the will as beneficiaries of the decedent's estate are appointed to serve as co-executors or any appropriate person is appointed to serve as executor with the assent of all such beneficiaries.
3. Whenever a decedent dies testate, a trust is named in the will as the sole beneficiary of the estate and any appropriate person, including one or more trustees of such trust, is appointed to serve as administrator with the assent of all such trustees.
4. Whenever a decedent dies intestate and an individual, including a surviving spouse, is the sole heir of the decedent's estate and is appointed to serve as administrator.
5. Whenever a decedent dies intestate and all heirs of the decedent's estate, including a surviving spouse, if any, are appointed to serve as co-administrators or any appropriate person is appointed to serve as administrator with the assent of all such heirs.
6. Whenever, in the discretion of the court, the court determines it is appropriate under the circumstances.

Under any of these circumstances, final administration of the estate takes place when the executor/administrator files a "Waiver of Administration Statement" (NHJB-2144-Pe) within six months to a year of their appointment certifying that no outstanding debt exists. An inventory of estate assets, a fiduciary bond and an accounting are not required under this form of administration. However, any interested person has the right to petition the Court for a full administration at any time from the original granting of administration to the filing of the Waiver of Administration Statement.

In a waiver of administration proceeding, you, as the executor/administrator, must prepare and file some, or all, of the following documents:

### Forms Used to Begin a Waiver of Administration

Number	Name
NHJB-2145-Pe	Petition for Estate Administration
NHJB-2120-Pe	Appointment of Resident Agent. (This document is required <b>only if</b> you reside outside New Hampshire. It appoints a New Hampshire agent to act for you. The resident agent is often an attorney).
Will and codicils	if the will was signed before 1986 or if the will was not acknowledged before a notary public or justice of the peace, you will need to "prove" the will, a process that is explained below under <b>Regular Administration</b> .
NHJB-2146-Pe	Statement of Counsel as to Propriety of a Foreign Will/Codicil to be admitted into Probate. (This form is required <b>only if</b> the will was made out of state.)
Death Certificate	You must obtain and mail to the court a certified copy of the death certificate. This is usually provided by the funeral director or you may contact the clerk of the city or town where the death occurred.
NHJB-2144-Pe	Waiver of Administration Statement

## *Regular Administration*

Unless the conditions for a Waiver of Administration are present, regular estate administration is required. Under New Hampshire law, if you are named as executor in a will, you have thirty (30) days after the decedent's death to file the will with the Circuit Court in addition to one of the forms listed below. The Court will review the will and forms you submit and will later inform you whether it is necessary to provide any witnesses to the signing of the will to "prove" its validity. You will be required to pay a filing fee by credit card with your electronic filing, or, you may pay the filing fee afterwards at the court. If the value of the estate is \$10,000 or more, your filing fee will include a fee to cover the cost of publication of the "Notice of Appointment" in the local newspaper. The decedent's will must be mailed to the Estates Electronic Filing Center or, it may be delivered to a Circuit Court Probate Division court. You will receive instructions for doing this in the Electronic Filing System. In addition to the will, you will need to file one or more of the forms listed below. The Electronic Filing System will guide you to the correct forms to file.

### **Forms Used to Begin a Regular Administration**

<b>Number</b>	<b>Name</b>
NHJB-2145-Pe	Petition for Estate Administration.
NHJB-2120-Pe	Appointment of Resident Agent. (This form is required only if you reside outside New Hampshire. It appoints a New Hampshire agent to act for you. The resident agent is often an attorney.)
Will and codicils (if any)	If the will was signed before 1986, you may need to "prove" the will—a process that is explained above.
NHJB-2146-Pe	Statement of Counsel as to Propriety of a Foreign Will/Codicil to be Admitted into Probate. (This form is required only if the will was made out of state.)
Death Certificate	You must obtain and mail to the court a certified copy of the death certificate. This is usually provided by the funeral director or you may contact the clerk of the city or town where the death occurred.
Corporate Surety Bond	If the value of the estate is \$25,000 or more, the court will require that you obtain a corporate surety bond, except in exceptional circumstances. The Court will set the amount of the bond after a review of the petition and review of the estate value. (See Glossary Corporate Surety Bond.)

Once you have properly filed the required forms and the court has reviewed and accepted them, you will be issued a Certificate of Appointment (Letter of Appointment) as executor or administrator. In addition, the court will send a "Notice of Appointment" to area newspapers if the value of the estate is \$10,000 or more and publication is required. This acts as formal notice to the public, to potential heirs, and to creditors that an estate has been opened and that you have been appointed executor or administrator.



## **AFTER YOUR APPOINTMENT**

### **THE INVENTORY**

After you receive the certificate of appointment as executor or administrator from the court, you must determine and protect the estate's assets. To show the court that this has been properly carried out you must prepare the "Inventory of Fiduciary" (NHJB-2125-Pe). (The inventory is not required in a waiver of administration.) The inventory form is available online and must be filed within ninety (90) days after your appointment date. The inventory should contain an itemization of real estate and personal properties, their values, and a description of real estate indicating the book and page number where the deeds are recorded at the County Registry of Deeds.

### **MANAGING THE ESTATE**

The nature of the assets involved (whether cash, real estate, stocks, or other personal property) will often determine the complexity of the estate's management. For all forms of administration, the estate must remain open for at least six months from the date of appointment to allow creditors to present claims. If all claims have been paid, the estate may be closed and a final account filed after six months. If the estate is not closed within one year of the date of appointment, an annual accounting is due at that time showing the income and disbursements and the overall status of the estate. The Circuit Court Probate Division must approve each accounting.

### **DEBTS**

Your first duty as executor or administrator is to see that the debts of the decedent are paid. New Hampshire law requires that certain debts receive priority in payment. These debts include: administrative expenses of the estate, taxes, reasonable and necessary funeral, burial and cremation expenses, debts and taxes with preference under federal law, just debts including claims for medical assistance made by the State of NH Department of Health & Human Services, total amount paid for old age assistance, and legacies under the will. See RSA 554:19 for more detail and exact priority. If there is insufficient cash in the estate to pay all of its debts, it will be necessary for you to sell enough of the assets of the estate to pay the outstanding debts. Sometimes the will may direct which assets, and in what order, should be sold to pay the debts. If not, generally personal property is sold before real estate. If you have any doubt about how and in what order you should sell off estate assets to pay debts, you should consult an attorney or petition the Circuit Court for instruction. If the asset to be sold to pay debts is real estate, you must petition the Circuit Court for a license to sell the real estate. You do this by filing the "Motion and License to Sell Real Estate to Pay Demands" (NHJB-2136-Pe). Whether the asset to be sold is real estate or personal property, you must attempt to obtain the best price for the property. You should use the inventory value as a guide to the appropriate selling prices. Consult experts for any asset to be sold whose value is difficult to determine, such as stocks, bonds or real estate.

## REAL ESTATE

If it is not necessary to sell real estate to pay demands on the estate, title to that real estate passes to those designated to receive it by will or by law. You must file a “Notice to Towns & Cities pursuant to RSA 554:18 – a” (NHJB-2142-Pe) with the court and with the town in which the real estate is located. If, however, the real estate is located outside New Hampshire, the New Hampshire Circuit Court has *no* jurisdiction. You should obtain legal advice concerning the probate laws of the state where the property is located. You may have to open a separate probate action in that state.

## TAXES

You are responsible for obtaining a federal tax identification number for the estate and for filing all federal and state tax returns for the decedent and the estate. The tax identification number is obtained by filing the Internal Revenue Service Form SS-4, “Application for Employer Identification Number,” with the IRS. A state Legacy and Succession Tax return (for deaths occurring prior to January 1, 2003), a state estate tax return, and a federal estate tax return may be required. Any federal tax is payable to the Internal Revenue Service. Any New Hampshire taxes are payable to the state Department of Revenue Administration. All these tax returns, if required, must be filed within nine months of the date of death, unless an extension is obtained. Even if an extension is obtained, an estimated payment must be made during this period. Penalties are automatically applied for failure to timely file each of these tax returns. Consult an accountant, tax attorney or other tax specialist to determine which of these returns must be filed.

## CLOSING THE ESTATE

If the estate has been processed using Waiver of Full Administration, it will be closed as described in those specific sections. If the estate has been processed using regular administration, it may be closed one of two ways: either with full oversight by the Circuit Court right through the distribution of any assets or through a process called summary administration.

If full oversight is needed, you should pay all the estate’s debts, and then prepare a final accounting using the form entitled “Executor’s/Administrator’s Accounting” (NHJB-2117-Pe). You must file it, along with a filing fee, with the Circuit Court Probate Division for its approval. Once the final account is accepted by the court, you should make the final distribution of assets. Fill out receipts (NHJB-2139-Pe) reflecting the distributions, have them signed by the recipients of the property and then file the receipts with the court. If a corporate surety bond is required for the estate, when the case closes, the Circuit Court will send you a certificate that you must forward to the bond company so that the bond may be released. At that point, the estate is closed. Your duties as executor or administrator have been fulfilled.

Summary administration is available as an alternative to the above, regular administration, process if you would like to expedite the closing of the estate when further court supervision of the administration of the estate is no longer necessary. You may file a "Motion for Summary Administration" (NHJB-2149-Pe) to close an estate not less than 6 months after your appointment. In order to be eligible for this process, there should be no outstanding debts or obligations against the estate, any NH or federal estate taxes should have been paid if any were due, and all legatees or beneficially interested parties must agree to the process, as indicated by the filing of an "Assent for Summary Administration" (NHJB-2122-Pe). If the court approves the "Motion for Summary Administration," no final accounting will be required. The court will then close the estate and, if a bond was required, send you a certificate that you must forward to the bond company so that the bond may be released. You would then be obligated to complete the administration of the estate without further court supervision in accordance with the decedent's will and applicable law.

## **COMPENSATION**

Under New Hampshire law, executors, administrators and their attorneys are allowed reasonable fees; these fees are determined by the nature of the estate. You may not take a fee for your services under a voluntary administration. Fees of fiduciaries are always subject to the approval of the Circuit Court.

## **TIMELINE**

For the most part, deadlines in the estate process proceed from the date the executor or administrator is appointed. The two exceptions, which proceed from the date of the death, are as follows:

### **Within 30 days of death:**

File the decedent's will with the Estates Electronic Filing Center, 2 Charles Doe Drive Suite 2, Concord NH 03301.

### **9 months after death:**

Last day for a legatee or heir to file a disclaimer rejecting some or all of their inheritance.

Federal Estate Tax Return due, if required. No federal estate taxes are due if the gross estate assets are under \$2 million. This amount increased to \$3.5 million in 2009. For 2011 and 2012 the amount is \$ 5 million. Thereafter the exemption is \$1 million unless changed by Congress.

NH Estate tax and Legacy and Succession tax, if required, are due and payable to the NH Department of Revenue Administration. The Legacy and Succession tax was repealed January 1, 2003, but may apply to estates for decedents who died prior to January 1, 2003. Such tax is not owed on property passing to lineal ascendants and descendants of the decedent, or to charity. A tax of 18% is imposed on the value of all other property (except life insurance) as in, for example, property left to a brother or a niece.

**At beginning of administration:**

File appropriate forms for type of administration being used. Administrator or executor of estate is then appointed by the Circuit Court Probate Division.

**Within 15 days of appointment:**

Estates Electronic Filing Center will provide for publication of notice of appointment.

**Within 90 days of appointment:**

File Inventory of Fiduciary (NHJB-2125-Pe).

**Six months after appointment:**

Deadline for creditors to file claims against the estate. Earliest date to close the estate if all the claims are paid.

Deadline for surviving spouse to waive will provisions and then homestead rights.

Earliest date to file Motion for Summary Administration (NHJB-2149-Pe) if this option is to be used.

**Six to 12 months after appointment:**

File "Waiver of Administration Statement" (NHJB-2144-Pe) if this is a waiver of administration proceeding.

**12 months after appointment:**

File Executor's/Administrator's Accounting (NHJB-2117-Pe) and do so every 12 months thereafter as long as the estate is open.

**ESTATE ADMINISTRATION CHECKLIST**

You may use this checklist as a guide to help you determine the assets and debts of the estate and to gather necessary information to process the estate.

**Documents to Gather:**

- Certified Copy of the Death Certificate
- Original Will and Codicils, if any
- Records of any public assistance received by the decedent. This includes: Old Age Assistance, Aid to the Permanently and Totally Disabled, and Medical Assistance (including Medicaid)
- Stocks and Bonds Certificates
- Certificates of title to personal property such as automobiles
- Insurance policies or any pension or profit sharing plan for which a death benefit is available
- Decedent's last Federal income tax return and NH Interest and Dividends Tax return (Find the name and address of the decedent's accountant, if any)
- Gift Tax returns
- Papers concerning Social Security and Veteran's Benefits

**Documents regarding outstanding bills, debts, or claims against the decedent such as:**

- Medical or hospital expenses and other monies owing for the last illness
- Mortgages due
- Loans and notes due
- Unpaid taxes
- Other general obligations
- Funeral charges and monument expenses
- All important records of any business that the decedent owned, either totally or in part, including information regarding assets and debts.

**Personal Information — Decedent:**

- Full Name
- Home Address
- Home Telephone
- Date of Birth
- Place of Birth
- Social Security Number
- Place of Employment
- Occupation
- Date of Death
- Place of Death
- Attending Physician
- Funeral Home
- Was the decedent a veteran?
- If yes, will funeral home apply for VA benefits?

**If decedent left no surviving spouse:**

- Name and date of death of spouse
- If divorced or legally separated, name of spouse and date of divorce. (If date of divorce unknown, place where divorce granted.)

**Personal Information — Surviving Spouse:**

- Full Name
- Home Address
- Date of Birth
- Social Security Number.
- Date of Marriage to Decedent
- Place of Marriage
- Place of Employment
- Office Telephone Number

**Decedent's Family Members**

- Full Name
- Home Address
- Date of Birth
- Social Security Number

□ Place of Employment

□ Office Telephone Number

When you make your list of family members, use the guide below. Note the relationship of each person to the decedent. For an intestate estate, see the **NH Intestacy Statute** to determine how far down the list to go.

Gather the names, addresses, social security numbers, and phone numbers of:

- Children (Note if any are stepchildren.)
- Parents
- Brothers, sisters
- Grandchildren, nieces, nephews
- Grandparents, aunts, uncles and cousins to the fourth degree

**Others mentioned in the will:**

- Names, addresses, phone numbers, social security numbers or tax identification numbers, of persons named to inherit in the will (note relationship to decedent).

**Bank Accounts:**

Indicate if the assets are in the decedent's name alone or jointly held. If jointly held, indicate with whom.

- Name and Address of Bank(s)
- Safe Deposit Box Number(s)
- Location of Key(s)
- Contents of the Safe Deposit Box(es)
- Savings Account Numbers
- Checking Account Numbers
- Balance(s) at date of death
- Certificate of Deposit numbers and amounts
- Investment or Money Market Account numbers and amounts

**Real Estate:**

List the following for *all* real estate owned by the decedent, whether or not it was held in joint tenancy.

- Location. (If the real estate is located out of state, you should consult an attorney in that state to determine the correct procedures.)
- Deed Reference (book and page number at County Registry of Deeds).
- Mortgage and name of bank holding mortgage.
- Mortgage Insurance
- Assessed Value at date of death (on tax bill)
- Name(s) on deed.

**Securities:**

If possible, photocopy certificates. If not, list the following information:

- Name of Corporation
- Certificate Number

- ❑ Common or Preferred stock
- ❑ Number of shares
- ❑ Value at date of death
- ❑ Name(s) on certificates
- ❑ Type of bond (i.e. US Treasury, Savings, municipal etc.)
- ❑ Series number
- ❑ Numbers on the bonds
- ❑ Face value of the bonds
- ❑ Value at date of death
- ❑ Name(s) on certificates
- ❑ Name and account number for all brokerage accounts
- ❑ Monthly or year-end account statements from which decedent's investment holdings can be determined.

*NOTE: The actual investment certificates can either be held by the brokerage firm ("in street name") or, by the decedent. If the latter, you will need to look for the stock or bond certificate among the decedent's effects.*

**Personal Property:**

Include the titles, registrations and insurance policies for the following:

- ❑ Automobiles
- ❑ Motorcycles
- ❑ Recreational Vehicles
- ❑ Boats
- ❑ Airplanes

List the following:

- ❑ Valuable personal property, such as coin or stamp collections, camera or video equipment, jewelry, antiques or art collections.
- ❑ Make arrangements for any pets which may need to be removed from the decedent's premises and cared for.

*NOTE: if the vehicles are being operated while probate is pending, make sure the insurance company is notified and the policies are fully paid.*

**Life insurance:**

- ❑ Company name
- ❑ Policy number
- ❑ Amount
- ❑ Beneficiary
- ❑ Insurance agent's name address and telephone number
- ❑ Where the policies are located?

*NOTE: If death occurred accidentally on a trip paid for, at least in part, with a credit card, the card issuing company will often provide life insurance and/or medical coverage. Therefore, the decedent's credit card records should be reviewed. If there are no records, contact the card-issuing company.*



**Debts:**

- ❑ Credit card records and statements, issuers, and account numbers.
- ❑ Loans and notes due (including mortgages): name of the lender(s) and the amount(s) owed at death.
- ❑ Unpaid taxes – income, property, business enterprise, interest and dividends, etc.
- ❑ General obligations.

**Glossary of Terms**

**Administrator:** A person or entity who will manage and settle an estate in accordance with the laws of descent and distribution when the deceased died without a will. RSA 553:2 states who has priority rights to administer a decedent's estate.

**Ancillary Estate:** Estate administration opened to settle the real estate owned by a person in New Hampshire when the person's primary residence and primary estate administration is in another state (or country).

**Ancillary Executor:** A person or entity appointed to manage and settle the deceased's real estate in NH when the decedent had a will and probate in another state (or country).

**Beneficiary:** A person or organization which receives money or property from an estate.

Beneficially Interested Person: – RSA 550:12 defines beneficially interested persons as heirs, legatees, devisees, attorney general (if a charity is involved), minors over 14 years, creditor who has not been paid, trustee of a trust that is the beneficiary of an estate. The beneficially interested persons are entitled to notice from the executor/administrator in an estate matter.

**Heir:** A beneficiary designated by law to inherit when a decedent does not leave a will.

**Devisee:** – A person or organization designated to receive real estate under a will.

**Legatee:** A person or organization designated to receive money or personal property under a will.

**Citation:** The court issues citations for failure to file an inventory or an accounting after a notice of default has been sent to the executor/administrator.

**Codicil:** An amendment or addition to a will, executed (signed) with the same formalities as a will. RSA 551:2.

**Corporate Surety Bond:** (guaranteed by an insurance company) –Is not required for an estate administration of less than \$25,000 (RSA 553:13), and is not required when there is a waiver of administration (RSA 553:32). The cost of the bond is an expense of the estate. The bond serves as an insurance policy for the value of the estate assets.

**Cy Pres:** A change in the use of a charitable trust to a different use or to a different charity because the prior use had become illegal, impossible or impracticable. The change in the charitable trust must be as close to the settlor's intent as the court can determine.

**Default:** The court issues defaults for failure to perform a duty or obligation, including the failure of an executor/administrator to file an inventory or annual account for an estate.

**Disclaimer:** The irrevocable relinquishment of a person's interest in an estate. When property is disclaimed, it is distributed to other heirs or beneficiaries as though the person died before the decedent.

**Executor:** A person or entity named in a will to manage and settle a deceased person's estate and to carry out the directions of the decedent.

**Fiduciary:** A person appointed to act as an administrator, executor, guardian, conservator, or trustee. A fiduciary holds property in a position of trust for the benefit of the beneficiaries or heirs of an estate.

**Homestead Rights:** A surviving spouse's right regarding ownership of the couple's principal residence.

**Inter vivos Trust:** A trust that is created and is in effect during a person's lifetime; also known as a **Living Trust**. Sometimes, an inter vivos trust is the beneficiary of a person's will.

**Intestate:** The estate of a person who dies without a valid will. RSA 561 details to whom an intestate estate is distributed.

**Issue:** Persons descended from a common ancestor, including children, grandchildren.

**Parties:** In estate cases, Parties are the people who have an interest in the estate.

**Pretermitted Heir:** A child of the decedent who is not named or referred to in the decedent's will. The child (or if deceased, the child's issue) is entitled to take a share of the estate equivalent to what the child would have received if the decedent died without a will. RSA 551:10.

**Power of Appointment:** The power given by a testator to someone else to name the beneficiaries of some or all of the estate.

**Probate:** The term "probate" refers to the process of proving that a particular document is a valid will. The term "probate" also refers to the functions of the Circuit Court Probate Division in the appointment of an administrator and supervision over the settlement of an estate.

**Settlor:** A person who creates a trust; also known as a grantor.

**Spousal Elective Share:** A surviving spouse may choose to waive his or her homestead rights and rights under the decedent's will and instead elect to take a certain amount of the decedent's estate set by statute (RSA 560:10). This statutory share is known as the "Spousal Elective Share".

**Summary Administration:** A process used to expeditiously close an estate without further supervision of the court if at least six months has passed since the appointment of the administrator, all debts are paid, and the administrator and beneficiaries all assent.

**Testamentary Trust:** A trust that is created within the will.

**Testate:** The estate of a person who dies with a valid will.

**Trust:** A type of ownership where property, real estate or personal property, is held by one party for the benefit of another. Trust terminology includes: Inter vivos, Irrevocable, Testamentary, Special Needs, Implied, Constructive, Express.

**Waiver of Administration:** Under certain circumstances the probate process can be simplified by filing a Waiver of Administration to settle the estate. It can be used whether or not there is a Will. This process requires minimal court supervision. An inventory, accounting and bond are not required under this form of administration. Waiver of Administration may be used under any of the following circumstances:

**Will:** The written legal declaration of a person's wishes concerning the distribution of a person's property after death. The term 'will' includes any codicils (amendments) to the will. RSA 21:22. To be valid a will must be in writing and adhere to specific statutory requirements. RSA 551:2.

Court forms are available online at: <https://www.courts.state.nh.us/circuitcourt/forms/eforms.htm#estate>

## **ELECTRONIC FILING SYSTEM**

To get started in the electronic filing system go to: <https://www.courts.state.nh.us/nh-e-court-project/electronic-services.htm> on the NH judicial branch website.

## **DRA LEGACY & SUCCESSION INFORMATION**

Tax return and other estate related forms are available from the Department of Revenue Administration by calling (603) 271-2191 or online at: <https://www.revenue.nh.gov/forms/legacy-succession.htm>

**Federal Tax Forms:** <http://www.irs.gov/formspubs/index.html>

## **Public Services Provided by the New Hampshire Bar Association**

### **LAWLINE**

Volunteer lawyers are available to answer your legal questions. Call 1-800-868-1212 on the second Wednesday of each month between 6:00 p.m. and 8:00 p.m. for free legal information.

### **LAW-RELATED EDUCATION (LRE)**

To improve young people's understanding of the law, the NH Bar Association sponsors programs and competitions such as "We the People - The Citizen and the Constitution," and the Mock Trial Program, and maintains a resource library of law-related education curricula, publications and videos.

### **LAWYER REFERRAL SERVICE (LRS)**

LRS provides referrals statewide for those who can afford to pay for an attorney's services (603) 229-0002. E-mail [lrsreferral@nhbar.org](mailto:lrsreferral@nhbar.org) for more information, or visit [www.nhbar.org](http://www.nhbar.org) , under the "Need a Lawyer?" heading.

### **MODEST MEANS LEGAL PROGRAM**

The Modest Means Legal Program is designed for people who have some ability to pay for an attorney but cannot afford an attorney's full fees. I (603) 715-3290. E-mail [modestmeans@nhbar.org](mailto:modestmeans@nhbar.org) for more information, or visit [www.nhbar.org](http://www.nhbar.org), under the "Need a Lawyer?" heading.