

## Overview - Opening an Estate Of A Deceased Person With A Will

### **General Information:**

When a petitioner seeks to open an estate for a person who has died with a will, the person appointed to oversee the management and distribution of the decedent's property is called the Executor of the estate. If a person dies without a will, the person appointed to oversee the estate is an Administrator. The role of Administrator and Executor is the same.

"Decedent" is the term used to refer to the person who died.

When a person dies with a will, their estate is called a *testate* estate.

A "beneficiary" is a person or organization designated in the will to inherit personal property or real estate.

It is the Executor's responsibility, under the court's supervision, to ensure that the debts and assets of the estate are managed and distributed in accordance with New Hampshire law.

Before filing a Petition for Estate Administration, the petitioner must determine if there are any assets owned by the decedent. If any assets are jointly held with rights of survivorship, they do not need to be probated. The same principle applies to other jointly held property, such as joint bank accounts. Joint accounts with rights of survivorship do not need to be probated. The proceeds of a life insurance policy also pass directly to the *beneficiary* named in the insurance policy, and are therefore not part of the decedent's probate estate. If the decedent owned an asset only in his/her name, or in common with others, then a probate estate administration must be opened to handle the asset.

### **Other Details:**

The petitioner seeking to open an estate is required to file a certified copy of the death certificate. This document is usually provided by the funeral home. The person who will be filing the Petition for Estate Administration will need this. See pamphlet: How can I get an Official Copy of a Death Certificate?

The petitioner will need to review the will and any codicils (amendments to the will) and collect the names and addresses of all persons and organizations listed in the will. This may include a trust if the will names a trust as the beneficiary. You will need the name and address of the trustee(s). This information will be needed to complete the Petition for Estate Administration.

The petitioner will also need the names and addresses of children and other close relatives of the decedent and will need to provide this information when filing the Petition for Estate Administration.

It is the responsibility of the Executor, under the court's supervision, to ensure that the debts of the estate are paid and assets of the estate are managed and distributed in accordance with New Hampshire law and the decedent's wishes as expressed in his/her will.

The Executor of the estate must inform all persons with any legal interest in the estate, including creditors and potential heirs, of any matters regarding the estate that might affect their interests.

If, for whatever reason, the Executor does not properly perform the duties of Executor, the court will appoint a "special fiduciary" to complete the administration of the estate.

If the Executor is unable or unwilling to serve, the Executor may decline to serve by filing a Declination form. The court will appoint a substitute Executor pursuant to the decedent's instructions, or upon petition by other interested parties.

If any of the decedent's property is held in a *trust*, this may make the estate more complex and it might be beneficial to consult an attorney to determine whether, or to what extent, the trust is involved in the probate process.

**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 and appraisal of estate assets, a fiduciary bond and an Accounting are not required under this form of administration.

Waiver of Administration may be used when one of the following conditions is present (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 administrator.
- (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-administrators or any appropriate person is appointed to serve as administrator 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.

The person who qualifies for the Waiver of Administration would begin the case by filing a Petition for Estate Administration and other required documents. On the petition is a question regarding Waiver of Administration.

The Waiver of Full Administration Statement must be filed no sooner than 6 months, nor more than one year after the date of appointment of the Executor/Administrator. There can be no outstanding debts, obligations, or unpaid or unresolved claims attributable to the deceased's estate. The court may approve the Waiver Statement if all provisions of RSA 553:32 have been met. Upon the approval of the Waiver Statement, the court will close the estate.

If a spouse or child qualifies to file for Waiver of Administration, but is under guardianship, the Guardian may be appointed as the Administrator of the estate. Also, if the Executor/Administrator is unable to complete the administration of the estate; the Successor Administrator may complete it using Waiver of Administration.

Any interested person has the right to petition the Circuit Court Probate Division for a full administration at any time from the original granting of administration to when the estate is closed.

For Waiver of Administration, in those estates in which there is a federal estate tax liability, the federal estate tax return must have been filed and all taxes must have been paid. All applicable New Hampshire estate taxes must have also been paid.

### **Other Helpful Resources:**

RSA:

RSA 553

RSA 554

Form(s):

Petition for Estate Administration (**NHJB-2145-Pe**)

Declination (**NHJB-2123-Pe**)

Estate Case - Important Information (**NHJB-3007-Pe**)

Waiver of Full Administration Statement (**NHJB-2144-Pe**)

Administering an Estate Booklet

Glossary of Terms

Pamphlet:

Pamphlet – How can I get an Official Copy of a Death Certificate?

Pamphlet – Wills – Frequently Asked Questions

Pamphlet – What is Waiver of Administration?

Pamphlet – Have you considered Summary Administration?

Checklist:

Checklist – Opening an Estate With a Will (#009e)

Checklist – Opening an Estate With a Will – Waiver of Administration (#013e)

What to Expect:

After Petition for Estate Administration

### **For Further Information:**

If you have questions, please contact the Information Center at 1-855-212-1234.