

# Overview - For Executor/Administrator After Appointment By The Court

## **General Information:**

### **The Inventory**

After the Executor/Administrator is appointed, s/he must identify and protect the estate's assets. To show the court that this has been properly carried out, the Executor/Administrator must prepare an Inventory of Fiduciary. The Inventory must be filed within ninety (90) days after appointment of the Executor/Administrator.

### **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. All estates 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 must be prepared and filed at that time showing the income and disbursements and the overall status of the estate. The Circuit Court Probate Division must approve each accounting.

## **Other Details:**

### **Debts**

Your first duty as Executor/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, and legacies under the will.

If the asset to be sold to pay debts of the estate is real estate, you must ask the court for a license to sell the real estate. You do this by filing a Motion and License to Sell Real Estate to Pay Demands. 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 may petition the court for instruction or you may want to consult with an attorney for advice.

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.

If there is insufficient cash in the estate to pay the debts and there are no assets to sell, you may follow the process for insolvency by filing a Motion to Determine Estate is Insolvent

### **Real Estate**

Title to that real estate passes to those designated to receive it by will or by law, unless it is sold to pay debts. If not sold, you must file a Notice to Towns & Cities form with the court, and with the town in which the real estate is located, pursuant to RSA 554:18-a.

If, however, the real estate is located outside New Hampshire, the New Hampshire Circuit Court has no jurisdiction over the property. You may have to open a separate probate action in the state where the real estate is located. You may want to obtain legal advice concerning the probate laws of the state where the property is located.

## **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 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.

## **Summary Administration**

Summary Administration is available 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 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 (people to inherit under the Will) or beneficially interested parties must agree to the process, as indicated by the filing of an Assent for Summary Administration" form.

If the court approves the Motion for Summary Administration no final accounting will be required. The court will then close the estate. If there was a corporate surety bond in place, the court will send you a Bond Discharge Certificate that you must forward to the surety 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.

## **Accounting**

If full oversight is needed, and Summary Administration is not selected, you should pay all the estate's debts, and then prepare a final Accounting using the form Executor's/Administrator's Accounting. You must file the form, along with a filing fee (if applicable). Once the final Account is accepted by the court, you should make the final distribution of assets. Fill out Receipts reflecting the distributions, have them signed by the recipients of the property and then file the receipts with the court.

The estate will be closed after receipts are filed and 30 days have passed from the date of the Accounting being allowed by the court.

If there was a corporate surety bond for the estate, the court will send you a Bond Discharge Certificate that you must forward to the surety company so that the bond may be released.

## **Compensation**

Under New Hampshire law, Executors, Administrators and their attorneys are allowed reasonable fees; these fees are determined by the nature of the estate. Fees are always subject to the approval of the court.

## **Other Helpful Resources:**

RSA:

RSA 553

RSA 554

Form(s):

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

Inventory of Fiduciary (**NHJB-2125-Pe**)

Executor's/Administrator's Accounting (**NHJB-2117-Pe**)

Motion and License to Sell Real Estate to Pay Demands (**NHJB-2136-Pe**)

Motion to Determine Estate is Insolvent (**NHJB-2667-Pe**)

Notice to Towns & Cities (**NHJB-2142-Pe**)

Internal Revenue Service Form SS-4, Application for Employer Identification Number

Administering an Estate Booklet

Glossary of Terms

Overview:

Overview of Filing an Inventory

Overview of Filing an Accounting

Pamphlet:

Pamphlet – Have you considered Summary Administration?

Pamphlet – What is Waiver of Administration?

## **For Further Information:**

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