

THE VERMONT PROBATE COURT
INSTRUCTIONS FOR SETTLING ESTATES

FOREWORD

This brochure is presented to provide you with information about how to administer a decedent's estate in the Vermont Probate Court. While the brochure is intended to help guide you through the probate procedure, it covers only the basics. It may not address the specific issues that arise in each estate. If you have any questions that this brochure does not answer, it is recommended that you seek professional assistance.

We hope that the brochure is helpful and invite your comments and suggestions.

Sincerely yours,

Lee Suskin
Court Administrator

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GENERAL INFORMATION

In Vermont, the administration of a decedent's estate comes under the jurisdiction of the Probate Court. The court oversees the probate proceeding in order to ensure that the assets of the decedent are managed and distributed in accordance with Vermont law and the directions of the decedent.

There are specific statutes and rules that must be followed by any fiduciary who is appointed to administer an estate. Many of these provisions will be referenced in the sections that follow. Although the information in this pamphlet is based on Vermont law in effect at the time of publication, the statutes and rules themselves are the final, definitive authority if there is any question.

While this manual is intended to help guide you through the probate procedure, it covers only the basics. It may not explain the specific circumstances that arise in each estate. Although a fiduciary may administer the estate without being represented by a lawyer, if you, as a fiduciary, are unsure of the legal or financial implications of any aspect of a probate proceeding, you should consult an attorney or an accountant.

CAUTION

1. This pamphlet cannot answer all of the questions that might arise during the administration of a decedent's estate. You should consult promptly with an attorney or the court when you are in doubt as to the correct way to proceed. The court will try to be helpful, but cannot give you legal advice. Seeking proper advice before you act may help you to avoid costly errors.
2. Do not pay any bills of the estate if you have any reason to feel that there are not sufficient assets in the estate to pay all bills in full. In cases where there are insufficient assets to pay everyone in full, the law specifically sets out the order of payment of the bills. If you pay them improperly, you may be personally liable to any creditor who is hurt by your action. If you have any doubts, do not pay the bills until you are sure you know all of the assets and all of the bills.

FORMS

Most of your activities require specific probate court forms, some of which are referenced in this manual. The forms are available from the probate court and on-line at:

<http://www.vermontjudiciary.org/eforms/probate.aspx>

TERMS

Beneficiaries. Those persons who will be given assets from the estate.

Decedent. The person who has died is the decedent.

Devises. Persons named in a will to receive real estate.

Fiduciaries, executors and administrators. Any person appointed by the court to administer an estate is a "fiduciary." If the fiduciary was nominated in the will to serve, then the fiduciary is called an "executor." If the fiduciary was not nominated in the will to serve, then the fiduciary is called an "administrator." The duties of an executor and an administrator are the same. This pamphlet will use the term "fiduciary" to refer to both executors and administrators.

Heirs. Heirs, who are sometimes also referred to as "heirs at law," are the persons who would inherit the estate assets under Vermont law if there were no will. Generally you can think of heirs as including immediate and extended family, both ancestors and descendants, of the decedent.

Intestate. "Intestate" is a term that refers to the estate of a decedent who died without a will, or with a will that was not allowed by the court.

Interested persons. "Interested persons" is a term that defines those persons who will be considered as parties and who must receive notice of various matters during the administration of the estate. Rule 17 of the Vermont Rules of Probate Procedure (*VRPP Rule 17*) describes who are interested persons.

At the beginning of an estate proceeding, the term "interested persons" includes heirs, devisees, legatees, children, spouses, and such other persons as the court directs.

After the proceeding has begun, the designation can change. The court can assist in determining who has to be served with various documents after the proceeding has begun.

Legatees. Persons named in a will to receive personal property.

Testate. "Testate" is a term that refers to the estate of a decedent who died leaving a will that has been allowed by the court.

STARTING THE PROBATE PROCEEDING

A probate proceeding is always started by filing a petition to open an estate with the probate court, together with the filing fee. The court has forms that you must use. *VRPP Rule 5(g)*. The petition has to be accompanied by a death certificate of the decedent or other proof of death acceptable to the probate court. *VRPP Rule 3*.

If there is no will. If there is no will, the spouse of the decedent or anyone who has an interest in the decedent's estate should contact the court for instructions on the petition and other appropriate forms that will need to be completed and filed with the court. A hearing will be held on the petition unless all of the heirs at law have consented to the appointment of the proposed administrator.

If there is a will. Property cannot be transferred according to a will unless the will has been allowed by the court. *§101 of Title 14 of the Vermont Statutes Annotated (14 VSA §101)* Anyone who has custody of the original of a will has to deliver it to the court, or to the person named as executor in the will, within 30 days after the death of the decedent. *14 VSA §103*. A hearing will be held on the petition (*14 VSA §107(a)*), unless all of the heirs at law consent to the allowance of the will and appointment of the nominated executor.

Once the will and other documents have been filed, and while awaiting the decision on allowance of the will, the executor named in the will has authority to assume custody of the estate for its preservation, unless or until a special or other administrator is appointed and qualified. *14 VSA §§107(b)*.

Notice to interested parties. At various points in the process of administration, you must provide information to the interested parties. The notice of hearing on the petition to open the estate, which must be given to all interested persons, is treated in a special manner, because it is the first notice anyone receives that a probate proceeding is being commenced. The notice must be sent by certified mail, return receipt requested, to insure that, as much as possible, it is actually delivered to the recipient. During the remainder of the probate proceeding, notice may be given by first class mail unless the court directs otherwise.

If the address of a party is unknown, you may file a motion asking the court to allow service by publishing a notice in a newspaper. If the court orders publication, it will require that you arrange for the notice to be published once a week for two consecutive weeks in a designated newspaper of general circulation.

You must file a certificate with the court listing the names and addresses of everyone to whom notice was given. If it was notice by certified mail, the return receipts must also be filed.

Bond. Before appointing you as a fiduciary, the court will require a bond from you. A bond is a promise, expressed in dollar terms, that you will perform the duties required by law. The purpose of the bond is to provide security for the beneficiaries and creditors if the fiduciary does not faithfully perform. The most common bonds are a principal bond for which you are personally accountable, a personal surety bond by which another individual joins in accepting personal financial responsibility if you fail, and a corporate surety bond by which an insurance company joins in financial responsibility.

GENERAL OVERVIEW OF DUTIES

You, as fiduciary, in a probate proceeding are responsible for the prompt, efficient, and impartial administration of the decedent's estate. *VRPP Rule 67; 14 VSA §917.* You have important duties to perform. The assets of the estate must be collected and the debts and obligations of the decedent must be paid if there are sufficient assets in the estate. You are required to notify the interested persons of any matters that may affect their interests. There are time limits within which these duties must be performed. While the court personnel may be helpful, remember that it is your responsibility to manage the estate carefully and promptly.

If you do not perform the necessary duties in a competent and timely manner, the court has the authority to remove you and to impose sanctions. *VRPP Rule 67; 14 VSA §917.*

Now that you have been appointed as fiduciary of the estate, you have to take following actions, using the court forms unless the court directs otherwise. *VRPP Rule 5(g).*

Inventory. You have to identify all of the decedent's assets, and file a report, called an inventory, with the court. Instruction sheets explaining how the assets are to be reported accompany the inventory form (*Form 30*). The inventory must be signed and notarized, and filed within 30 days of your appointment. Copies must be sent to all interested persons, by first class mail, whether they have requested notice or not. *VRPP Rules 5(a), 5.1, 17(b), 66.* See also "*Real estate description*" under PARTICULAR ISSUES.

Your certificate of appointment is proof that you have the authority to obtain the information you need to prepare the inventory. This certificate may be required by banks, investment companies, insurance companies, the decedent's employer, the Social Security Administration, and others. If people do not cooperate with you, you may have to have an attorney or the court assist you.

Do not list assets jointly held with others with rights of survivorship, life insurance policies with a designated beneficiary, Totten trust or beneficiary savings accounts, or any other asset that passes directly to a living owner without probate court action. If you are unclear as to whether an asset needs to be listed, contact your own attorney.

All property should be listed on the inventory at its fair market value *as of the date of death of the decedent*. Each titled asset (such as real estate, bank accounts, stock accounts, and motor vehicles) should be itemized separately. Sometimes untitled assets (such as personal effects) can be consolidated.

You sometimes must decide whether to estimate values, calculate them from independent sources, or hire an appraiser. The inventory date-of-death values have important tax implications for the estate and for the beneficiary. Among the situations in which a professional appraisal is particularly recommended are: (a) for specific items going to specific beneficiaries, (b) for assets of great value, (c) for items that must be divided among beneficiaries, and (d) for assets whose value is disputed by the beneficiaries. The court may sometimes order an appraisal on its own motion.

The filing time can be extended up to 90 days from appointment, but only by court permission. *VRPP Rule 66(a)*. If you later find that you omitted assets from the initial inventory, you may file an amended inventory, a supplemental inventory, or include the assets under Schedule E of your next account as "Other estate not in inventory."

Notice to creditors. You must send a creditor's claim form (*Form 34*) to any creditor known to or reasonably ascertainable by you. You must also publish notice to creditors (*Form 32*) in the newspaper for two weeks in a row, and provide the court with a copy of the published notice within 10 days after last publication. *VRPP Rule 64*. The notice alerts creditors that if they want to be paid, they must file a claim with the court and with you within four months of the date of the first publication. If they do not do so, their claim may be barred forever.

In cases where you are absolutely sure that you know all of the debts (including Medicaid claims), or you know that there are no debts, you can file a motion (*Form 33*) asking the court to waive the requirement of publishing the notice to creditors. A copy of the motion must be sent to all interested parties. The court may require a hearing to determine whether the motion should be granted. While waiving the publication can save some money and time, you should be cautious about pursuing it. If there are creditors that you do not know about, failing to publish notice extends the time in which they can file a claim to three years after the death of the decedent. Publishing the notice gives you certainty that four months after the first date of publication you will know all of the outstanding claims.

Generally, unless you are absolutely certain that you will have enough money to pay all claims that are filed, you should not pay any bills until the time for filing claims has expired. If there is not enough money to pay every claim, the law sets up a priority of who should be paid and in what order. If you make a mistake and pay a claim that is not entitled to priority, you may be called upon to personally repay the estate for your mistake. You may seek guidance from an attorney if you are uncertain about priority. The court can issue a formal order, called an order of dividend, to determine priority.

Administration expenses. As long as the estate is open, you will be responsible for preserving the assets of the estate. That may include making arrangements for the safe storage of personal property and keeping buildings and real estate insured. You may have to pay monthly mortgage bills, electric bills, fuel oil bills and the like. These kinds of bills for preserving and maintaining the property are called administration expenses.

You can pay administration expenses even if you do not have enough money to pay creditors' claims because administration expenses have a higher priority than claims of creditors.

Separate bank accounts. You should have a separate checking account for the estate. Estate funds must be kept separate from your own funds and should not be commingled with any other funds. You must keep exact and careful records of all money coming into and going out of the estate.

Licenses to sell, etc. If you determine that it is necessary or in the best interest of the estate and beneficiaries to sell real estate (*Form 35*), or personal property (*Form 37*), or to convey, mortgage or lease real estate (*Form 36*) or personal property (*Form 38*), you must file a motion for a license with the court, after the inventory has been filed.

Personal property includes not only tangible personal property, like tools, equipment, furnishings, and vehicles, but intangible personal property, like stocks and bonds.

As a matter of sound planning, you may review your inventory and seek a license to sell all items that might be sold during the administration of the estate, even if you do not have immediate marketing plans.

All the property must be carefully described, but particularly the real estate. See "*Real estate description*" under **PARTICULAR ISSUES**.

The court will schedule a hearing and provide for notice to all interested parties. *14 VSA §1651(3), §1653(a)*. If the fiduciary files with the court the written consents of all the heirs, then the hearing may be waived. Consents will usually expedite the issuance of a license to sell.

If the motion is granted, the court will issue the license. A certified copy of the license to sell real estate needs to be recorded in the land records of the town where the property to be sold is situated.

The court may increase the amount of your bond prior to issuing the license, because, after the sale, you will be managing more liquid assets than you were previously. *14 VSA §1651(4)*.

Within 30 days after the sale or conveyance, you must file a report of sale (*Form 43*) with the court. You also must report the sale in your interim or final account.

Purchasing assets for the estate. As you are responsible for conserving the assets of the estate, purchase of new assets should not be undertaken without prior permission of the court.

Spousal rights. A surviving spouse has certain rights that take priority over the rights of heirs at law and beneficiaries. Within 30 days of your appointment, the surviving spouse must be provided with notice of these rights (*Form 47*) by either you or the court. The surviving spouse must elect to take any spousal rights within 8 months of your appointment. The election must be in writing and filed with the court (*Form 46*). The following is a list of the possible elections:

Personal estate: A surviving spouse may claim a minimum one-third share of the decedent's personal estate. *14 VSA §402*.

Household furnishings: A surviving spouse can seek assignment of household furnishings. *14 VSA §403*.

Real Estate: a. homestead - A surviving spouse may claim equity in the dwelling and land that the surviving spouse occupied with the deceased spouse up to a certain amount that is currently \$75,000. 27 VSA §§101, 105. **b. other real estate (dower/curtesy)** - A spouse can take a one-third share of the decedent's real estate other than the homestead. 14 VSA §§461- 475.

Spousal and family allowance: A surviving spouse may ask the fiduciary for support for the surviving spouse and minor children. 14 VSA §404.

Rights of surviving spouse when decedent has no descendants: A surviving spouse whose deceased spouse did not have descendants and who waives provisions under the decedent's will, can take the decedent's entire estate up to \$25,000 and half the remainder. The remaining half of the estate shall pass as if the spouse had not survived. 14 VSA §551(2).

Filing accounts. You must file a final account of your administration when the estate is ready for a final decree of distribution from the court.

You also may have to file an interim account. Annual interim accounts are required if the estate takes more than a year to settle. 14 VSA §906(3). In addition, an interim account may be requested by the court at any time.

The account must be filed on the forms provided by the court. *VRPP Rule 5(g)*. The court has two alternative sets of accounting forms, *Form 56*, and *Form 56A*. *Form 56A* is the form in most common use.

While the account forms are largely self-explanatory, it may be helpful to think of the account as a pipeline, or assembly line. At the beginning of the line, you report the value of the assets you began with, the real and personal property values from your inventory or last account. You then report what you have added in value [Schedules A through E of *Form 56A*] and what you have taken away [Schedules 1 through 14 of *Form 56A*]. Finally, you report what remains at the end of the accounting period [Schedules 15 and 16 of *Form 56A*]. "Schedule" is the court's term for the attached sheets on which you itemize, or otherwise explain, the figures on your account summary.

Do *not* report the changing values of assets that remain in the estate and undergo fluctuating market values or depreciation. Those assets remain in your accounting at their original inventory values, until or unless they are sold. Upon sale, you then report either the resulting loss [Schedules 4 and 5 of *Form 56A*], or gain [Schedules A and B of *Form 56A*].

Fiduciary's fees and attorney's fees. Attorney's and fiduciary's fees should be presented in detail (date, activity, time spent). They cannot be paid unless they are allowed by the court. The fees must be reviewed by the court for reasonableness. The court will use the factors listed in the Vermont Rules of Professional Conduct Rule 1.5(a). Those factors include, among others, time and labor required, and experience of the attorney or fiduciary. *VRPP Rule 66(c)*. Generally, fiduciary and attorney fees may not be claimed on a federal or Vermont tax return until they are approved by the court and actually paid.

Taxes. You are responsible for filing all tax forms. These may include the decedent's final state and federal income tax returns, and possibly a fiduciary income tax return for the estate, and an estate tax return.

The decedent's tax year ends with the date of the decedent's death. Income through that date must be reported in federal and state individual tax returns. If the decedent was married at the time of death, it is possible for the surviving spouse to file a joint return for the year.

The estate becomes responsible for reporting all income that is generated after the death of the decedent, including the filing of any federal and state fiduciary income tax returns. If you are unsure about the income tax liability of the decedent or the estate, you should consult an attorney, accountant, or other tax preparer.

See also [COMPLETING AND CLOSING THE ESTATE](#), for estate tax returns and Vermont Department of Taxes tax clearance.

PARTICULAR ISSUES

The following are particular issues that may come up during administration of the estate:

Real estate description

If there is real property in an estate, there are several instances in which the real estate must be described, e.g., the inventory, motions for license to sell, and decrees of distribution. It is very important that the description be "legally sufficient." If a description is not legally sufficient, the property will have a title defect, and the beneficiary or buyer of the property may have to require you as fiduciary to reopen the proceedings in order to complete the transfer of the property.

A number of issues affect whether a description is legally sufficient. Simply securing a copy of the deed to the decedent may be inadequate as it will not reflect changes to the title after the property was acquired. Changes may include sale of part of the property, or utility easements.

It is recommended that you engage an attorney to prepare the description, preferably after the attorney conducts a title search. You will need an attorney in any event to prepare the deed and other title documents if there is a sale. Thus, it may be helpful to contact the attorney for the initial property description.

What to do if you disallow a claim

As personal representative of the estate you are responsible for deciding whether to allow or disallow the claims that are filed against the estate by creditors. If you determine the claim is valid, you do not need to take any special steps.

Sometimes, however, you may have concerns about whether a filed claim is valid. If you determine, for some reason, that the claim is not valid, you need to take specific steps to disallow it. If you do not take these steps the claim may be deemed, by law, to be allowed because of your inaction.

If you intend to disallow a claim, the procedure is as follows:

1. You have to mail a notice to the claimant whose claim is being disallowed. The notice must state that you are disallowing the claim. You can disallow the claim in whole or in part. Be sure to tell the claimant what you are disallowing. 14 VSA §1206(a).
2. Your notice of disallowance must be sent within 60 days after the time for the original presentation of the claim. 14 VSA §1206(a). The time for original presentation is usually within four months after the first date of publication of notice to creditors in a newspaper. 14 VSA §1203(a)(1). If no notice to creditors was published, the time for original presentation of the claim is three years after the death of the decedent. 14 VSA §1203(a)(2).

3. The notice you send should include the following statement of warning to the claimant: **"Unless you file a petition with the Probate Court asking the court to allow your claim, or, unless you file a proceeding against the personal representative of the estate, within 60 days after this notice of disallowance is mailed, your claim will be barred forever."**

4. If you do not include this warning, the creditor has additional time to appeal your disallowance.¹⁴ VSA §1206(a).

5. If the claimant files a petition or institutes action against you seeking allowance of the claim, the court will decide whether the claim is valid. If no petition is filed and no action is instituted against you, the disallowance stands.

6. If a creditor files a petition with the court for the allowance of the claim, you have to file with the court, within ten days after the appeal is filed, a statement showing why the claim should be rejected or reduced in amount. VRPP Rule 64(d). At any hearing on the claim, you should be prepared to present evidence justifying the disallowance.

Fiduciary liability

General duty. As a fiduciary, you are charged with the responsibility of administering the decedent's estate faithfully, lawfully, and honestly, in accordance with the decedent's will allowed by the court, if there is one, and in accordance with Vermont law. The body of Vermont law to which you are obligated includes not only the Vermont Statutes Annotated (especially Title 14) and the Vermont Rules of Probate Procedure, but also the applicable case law and common law principles, in addition to all orders, decrees and other directions of the probate court. As noted above (see Page 4), your fiduciary bond serves as a form of security to the beneficiaries and creditors for your performance of this duty.

Expeditious handling of the estate. One of the most common sources of estate litigation is the failure of the fiduciary to act with reasonable speed and deliberation. Do not let the estate languish. If necessary, hire an attorney, accountant, or other professional to help settle the estate as quickly as possible.

Recognizing conflicts. Occasionally, your performance of your duty and your obligations to the beneficiaries and creditors will come into conflict with your own personal rights, needs or desires (or those of a friend, family member, or business associate.) When that happens, you must recognize that a conflict may be present, and take all steps necessary to resolve that conflict.

While conflicts can sometimes be subtle, you must be vigilant at all times to avoid them. Common conflicts which often arise concern claims against the estate, or in selling or renting estate property. Self-dealing must be avoided. While conflicts can take many forms, one of the most common occurs when a fiduciary wishes to buy estate property, or when the estate or decedent may owe the fiduciary money and it becomes necessary for the fiduciary to file a claim.

Resolving conflicts. Conflicts can often be resolved by petitioning the court to appoint a special administrator for a specific purpose (e.g. to sell the estate property or handle the fiduciary's claim.) Sometimes they can be resolved by making full disclosure and by obtaining consents from all interested parties, or by court order after an open, noticed hearing. However, in order to be resolved, the conflict must first be recognized and identified. Whenever there is a likelihood or even a question of a conflict being present, you should immediately seek competent, professional guidance as to how to approach resolution.

Decrees of partial distribution

No asset can be distributed to the beneficiaries until the court issues a decree of distribution.

The court may allow an interim partial distribution of assets, by decree of partial distribution, if you can satisfy the court that sufficient assets have been reserved to satisfy the debts, costs of administration, taxes, and other obligations of the estate. The recommended procedure is to file an interim account with your request for partial distribution, and include a schedule of your estimated remaining unpaid obligations. 14 VSA §1743.

Partial distributions carry risks for the beneficiaries and the estate. If the estate thereafter becomes insolvent, because there were not enough assets to meet the estate's obligations, the beneficiaries who received partial distribution are liable to repay the fiduciary in proportion to their distributions. If the fiduciary cannot collect reimbursement from all of them, the fiduciary is entitled to seek reimbursement proportionally from the remaining beneficiaries who received distributions. 14 VSA §1743.

On the other hand, there are sound reasons for pursuing a partial distribution. Persons are no longer deemed beneficiaries once they have received all of their interest from the estate. *VRPP Rule 5.1(d)(1)*. An early distribution of small bequests can reduce the number of interested persons requiring notice or consent, and so reduce the cost of administration. Another reason for seeking early partial distribution is the possibility of otherwise having to pay interest on a legacy if the estate stays open for an extended period. See the following section, entitled Who gets the income?

Who gets the income?

Under Vermont case law, unless the will provides otherwise, pecuniary legacies draw interest from one year after the date of death. *In re Taft's Estate*, 114 Vt. 505, 511 (1946). A "pecuniary" legacy consists of money. All other legacies draw interest from one year after allowance of the will, unless the will provides otherwise. *Vt State Baptist Convention v. Ladd*, 58 Vt. 95, 100 (1886). Dividends on shares of stock that are specifically bequeathed are paid to the legatee from death until distribution, unless the will provides otherwise. See *Estate of Barslow*, 128 Vt. 192 (1969). Absent a specific provision of law such as the foregoing, or an order of the court, you should proceed on the assumption that income from assets remain with the estate, during the probate administration.

Stocks and bonds

If the estate includes stocks and bonds, or any other asset that is subject to a fluctuating market value, it is important to plan for the possibility of a rapid decline in market value. You should determine early on whether the assets are going to be sold by the estate and reduced to cash, or distributed in kind to the beneficiaries. You may wish to seek a license to sell, even if the plan is for distribution in kind, to be prepared for an unexpected market crisis. If the plan is for distribution in kind, you may wish to seek an early decree of partial distribution, to shift the risk of market loss, and the ability to make decisions, from the estate to the ultimate owners as early as possible.

Insolvent Estates

If you do not have enough money to pay the bills, the available funds will have to be allocated among the various creditors in a particular priority according to law. ***As soon as you believe you may have an insolvent estate, contact the court, and make no payments of claims until you receive further direction from the court.*** If you pay claims until you run out of money and then contact the court, you may find you have made payments out of priority, and will become responsible to priority creditors who were not paid for recovery of the funds. In an insolvent estate, you will make payments

under a decree called an Order of Dividend that will be issued by the court after notice to all the creditors and a hearing.

COMPLETING AND CLOSING THE ESTATE

In order to obtain a final decree of distribution from the court, you must provide an approved final account, and obtain a tax clearance from the Vermont Department of Taxes. The final steps in the estate are as follows:

1. **Final accounting.** Prepare a final account [*Form 56A* or *56*]. In addition to all income and expenses for the accounting period, the account must show, on schedules 15 and 16, all assets remaining to be distributed. In addition, the accounting must show, on schedule 17, *how* you wish those assets to be distributed.

a. *Attorneys' fees* and *fiduciary's fees* are specially treated in the final account. As noted above, they cannot be paid until they have been approved and allowed by the court. At the same you need to show them as if paid, so that Schedules 15, 16, and 17 can accurately reflect the balance remaining to be distributed to the heirs. To meet these competing goals, include the unpaid attorneys fees and fiduciary fees in Schedules 11 and 12 as if paid, but flag them with an asterisk or other notation and indicate "**To be paid when account is allowed.**" Any other postponed payment, such as a tax preparer's fee for preparing final returns after distribution, may be flagged in the same manner.

b. The final account and notice of hearing on the account must be sent by first class mail to all beneficiaries and to any others who have entered an appearance. The notice must state whether a decree of distribution will be issued following allowance of the account by the court. The notice must state that a written objection must be filed with the court three days before the hearing. A certificate of service (*Form 124*) must be filed with the account to prove service has occurred. Alternately, you may file the account with consents (*Form 155*) from the beneficiaries and any others who have entered an appearance. The court may then waive a hearing and issue the decree.

2. **Tax Clearance.** You must file all necessary tax forms. A Vermont Estate Tax Information and Application for Tax Clearance must be filed with the Vermont Department of Taxes. The form is available from the court. A tax clearance must be issued by the Vermont Tax Department before the court can issue a final decree.

NOTE: You are also responsible for filing any other necessary tax forms, which may include final state and federal income tax returns and fiduciary income tax returns. You need to determine whether a federal estate tax return (IRS Form 706) must be filed. It will be necessary to consult an attorney or accountant to determine what forms must be filed. Deadlines must be met to avoid penalties. **Do not delay obtaining professional advice.**

3. **Final Decree.** After the final account has been allowed and a tax clearance has been received, the court will issue a final decree, which directs the fiduciary to distribute remaining funds. **FUNDS MAY NOT BE DISTRIBUTED UNTIL A DECREE HAS ISSUED.**

Once the decree or order of dividend is issued, interested parties have 30 days to appeal the order. When that time has passed with no appeal, you can distribute the assets according to the court order. Some fiduciaries carry out distribution before the 30 days is up, if they believe the possibility of an appeal is remote. However, they need to understand that they distribute at their own risk if they do so during the appeal period. Another alternative is for the beneficiaries to waive the appeal period in writing.

4. Distribution. Distribution should be carried out promptly. In connection with the distribution:

- a. You will be seeking a probate receipt (*Form 153*) from each beneficiary. If you anticipate difficulty persuading any of the beneficiaries to sign and return the receipts, it may be worthwhile to include stamped-self-addressed envelopes with the receipt form.
- b. If the estate will be preparing a final fiduciary income tax return, with the tax consequences passed to the beneficiaries, the tax preparer will want federal identification (or social security) numbers for the beneficiaries. These should be solicited in connection with the receipts, unless they have previously been obtained.
- c. If real estate is being decreed, you will need a certified copy of the decree (rather than a conformed copy) from the court, and the certified decree will need to be recorded at the town clerk's office of the town where the property is located accompanied by a Vermont Property Transfer Tax Return. The Transfer Tax Return is not a probate form. It may be obtained from the Vermont Department of Taxes, or from a town clerk, may require the assistance of an attorney to complete, and should be signed by both the fiduciary and the beneficiary.

In connection with real estate, the court will require not only the receipt but also the recording information, the book and page of the town land records where the decree was recorded. This may be provided on the receipt, or by way of a copy of the recorded decree that incorporates the recording information.

5. Closing report and discharge. Upon completion of distribution, you will file a closing report (*Form 152*), with the beneficiaries' signed receipts attached. [*Note:* Up to a year is permitted by statute unless the court requires an earlier filing.] If all is in order, the court will sign and return to you an approved copy of the closing report. It will also provide you with a discharge of surety if your bond had corporate or personal sureties.

At this point, you are discharged of your duties, and you have no further power to act. If additional assets are found later, the estate will need to be formally reopened.

SMALL ESTATES

If you want to open an estate that has assets of not more than \$10,000.00, you may be able to use a simpler procedure than the others discussed in this manual. It is called the small estate procedure and may save time and money in processing the estate.

The primary aim of the small estate procedure is to allow the fiduciary to close the estate more quickly than would happen if the ordinary procedure is used. The small estate procedure involves less supervision by the court. The estate has to meet certain criteria, and it remains in the court's discretion whether you will be allowed to use the small estate procedure. *14 VSA §1902.*

To qualify, (1) beneficiaries are limited to a surviving spouse, children of any age, or both; (2) the decedent's estate must consist only of personal estate (no real estate requiring probate to pass title); and the personal estate, appraised at its true cash value, must not exceed \$10,000.00 in value. *14 VSA §1902.*

To initiate the procedure, you must file: (1) a small estate petition (*Form 7A*), (2) a regular estate inventory (*Form 30*) with the true cash value of assets sworn to by one or more competent appraisers or a disinterested person appointed by the court, (3) a small estate principal bond (*Form 20B*) conditioned on payment of funeral expenses within one year of death, in a \$300.00 principal amount

unless the court sets a higher bond, (4) the will, if any, (5) the death certificate, and (6) the entry fee. *VRPP Rule 80.3(a)*.

The probate judge will review the documents, and may grant administration without further notice or hearings, or may impose additional requirements. However, if there is a will, you will be required to send a copy of the will by 1st-class mail to all interested persons with notice of their right to object, and you may be required to give notice by publication if all interested persons cannot be located. If all interested persons consent to the will, no such further notice or hearing will be required. *VRPP Rule 80.3(b-c)*.

The fiduciary may, but is not required to, give notice to creditors to present claims. However, even though you are not obligated to give notice to creditors, you *are* obligated to pay all known debts of the decedent from the assets of the estate. If a creditor is not paid before you distribute the assets, then the creditor can later establish a claim and recover from the beneficiaries of the estate. If you publish notice to creditors, they have only four months after the first publication to establish their claim. If you do not publish notice, they have up to three years after the decedent's death. *14 VSA §1903(c); VRPP Rule 80.3 (Reporter's Notes)*.

Once the court has granted administration to you and you have been appointed the fiduciary for the estate, you are obligated to: (1) pay from the assets of the estate all funeral and burial expenses and known debts of the decedent, and provide receipts for payment to the court, (2) distribute the balance of assets to the beneficiaries, in accordance with the law or with an allowed will as directed by the court, and (3) file a statement with the court under oath showing how distribution was made. Once the court has accepted this report, the court will discharge you as fiduciary of the estate. You will not be required to obtain a tax clearance from the Vermont Department of Taxes unless the court directs you to do so. *VRPP Rule 80.3(g)*.

MOTOR VEHICLE AS SOLE ASSET

If the principal asset of the estate is a motor vehicle, there is a surviving spouse, and there is no will, Vermont law provides for transfer of the motor vehicle title without opening an estate. *23 VSA §2023(e)*. The surviving spouse files a notarized petition (*Form 59*) with the probate court. The court issues an order to be included with the documents taken by the surviving spouse to the Department of Motor Vehicles to transfer the title.

ANCILLARY ESTATES (Non-resident decedents)

When a nonresident of Vermont has an estate administered in the decedent's home jurisdiction, there may also have to be an estate opened in Vermont, as when, for example, the decedent owned Vermont real estate. The Vermont estate is then called an "ancillary" administration. *14 VSA §§113-116, 1215-*

1216; VRPP Rule 80.2.

An ancillary estate is initiated by filing: (1) the ancillary petition (*Form 6*) signed by the home state fiduciary or other interested person, (2) a list of interested persons (*Form 5*), (3) a description of the ancillary property (*Form 7*) (See "*Real estate description*" under PARTICULAR ISSUES), (4) the filing fee, (5) an **authenticated** copy of the will and the probate thereof from the home state court, or other acceptable proof that the will is effective in that jurisdiction. Note that an **authenticated** document is different from a **certified** document. Commonly, the home state court will understand what is required.

The petitioner will be required to give notice to all interested persons that a hearing on allowance of the will has been scheduled and that any objections must be served within 14 days of service of the notice. *VRPP Rule 4; VRPP Rule 80.2(b)*. Objections must be filed in writing within the time allowed. Objections must state why the will should not be allowed or any other objections. *VRPP Rule 80.2(b)*. If no objections are filed, the will is allowed on the date specified in the notice. Otherwise, a hearing will be held on that date.

The probate process for an ancillary estate is generally the same as for a Vermont estate. The fiduciary may submit an affidavit stating that all debts in the home jurisdiction have been paid in full, instead of providing notice to creditors in the home jurisdiction. Creditors shall be given notice in Vermont as well.

The ancillary fiduciary is obligated to pay debts of the decedent, wherever located. If the estate is insolvent overall, claims are paid on a pro rata basis. *14 VSA §1215*. **CAUTION:** Requests for partial decrees of real estate from the ancillary estate must be supported by proof that the home jurisdiction estate has sufficient assets to pay all claims against the estate.

Instead of a final decree to the beneficiaries, if the home jurisdiction administration is open, the remaining estate shall be paid over to the home jurisdiction fiduciary pursuant to *14 VSA §1216*, with exceptions provided therein.

A tax clearance must be obtained prior to final distribution of remaining assets.

TIMELINES	
<i>Within 30 days after death</i>	Within 30 days after appointment
1. READ THIS BOOK	1. Notify beneficiaries (form28)
2. Deliver the will to Probate Court	2. Open estate checking account
3. File petition to open estate	3. File the inventory
	4. Notify Creditors
<i>Within 9 months after death</i>	Within 8 months after appointment
1. File federal estate tax return, if any	Surviving spouse files election of rights
2. Heirs file disclaimers, if any	Within 1 year after appointment
	File account

ESTATE ADMINISTRATION CHECKLISTS

Documents to gather

- Death certificate
- Will, and any codicils (unless already at Probate Court)
- Decedent's social security card
- Medicaid records
- Last Vermont and federal income tax returns
- Any prior gift tax returns
- Prenuptial, marital agreements
- Social security and VA benefit information
- Life insurance policies/statements
- Bank statements, brokerage account statements
- Stock, bond, savings bond certificates
- Safe deposit box keys, rental statements
- Title certificates for vehicles and other personal property
- Deeds, mortgages

Information to gather (name, address, telephone)

- All next of kin (spouse, children, parents, siblings, cousins, etc.)
- All other will beneficiaries
- Date of birth of everyone under 18 years of age
- Social security numbers for all beneficiaries

Resources (name, address, telephone)

- Decedent's tax preparer
- Decedent's employer
- Labor union to which decedent belonged

PROBATE DISTRICTS ARE DIVIDED BY COUNTY, WITH THE FOLLOWING EXCEPTIONS:

BENNINGTON COUNTY

District of Manchester: Arlington - Dorset - Landgrove - Manchester - Peru - Rupert - Sandgate - Sunderland and Winhall.

District of Bennington: Bennington - Glastenbury - Pownal - Readsboro - Searsburg - Shaftsbury - Stamford and Woodford.

RUTLAND COUNTY

District of Fair Haven: Benson - Castleton - Fair Haven - Hubbardton - Pawlet - Poultney - Sudbury - Wells and West Haven.

District of Rutland: Brandon - Chittenden - Clarendon - Danby - Ira - Mendon - Middletown Springs - Mount Holly - Mount Tabor - Pittsfield - Pittsford - Proctor - Rutland Town - Sherburne - Shrewsbury - Tinmouth - Wallingford and West Rutland.

WINDHAM COUNTY

District of Marlboro: Brattleboro - Dover - Dummerston - Guilford - Halifax - Marlboro - Newfane - Somerset - Stratton - Vernon - Wardsboro - Whitingham and Wilmington.

District of Westminster: Athens - Brookline - Grafton - Jamaica - Londonderry - Putney - Rockingham - Townshend - Westminster and Windham.

WINDSOR COUNTY

District of Windsor: Andover - Baltimore - Cavendish - Chester - Ludlow - Plymouth - Reading - Springfield - Weathersfield - Weston - West Windsor and Windsor.

District of Hartford:

Barnard - Bethel - Bridgewater - Hartford - Hartland - Norwich - Pomfret - Rochester - Royalton - Sharon - Stockbridge and Woodstock.

PROBATE COURTS

Addison Probate Court 7 Mahady Court Middlebury, VT 05753 (802) 388-2612	Bennington Probate Court PO Box 65 (207 South St) Bennington, VT 05201-0065 (802) 447-2705	Caledonia Probate Court PO Box 406 (1126 Main St) St. Johnsbury, VT 05819-0406 (802) 748-6605	Chittenden Probate Court PO Box 511 Burlington, VT 05402-0511 (802) 651-1518
Essex Probate Court PO Box 426 Island Pond, VT 05846-0426 (802) 723-4770	Fair Haven Probate Court 3 North Park Place Fair Haven, VT 05743 (802) 265-3380	Franklin Probate Court 17 Church Street St. Albans, VT 05478 (802) 524-4112	Grand Isle Probate Court PO Box 7 North Hero, VT 05474-0007 (802) 372-8350
Hartford Probate Court 62 Pleasant Street Woodstock, VT 05091-0275 (802) 457-1503	Lamoille Probate Court PO Box 102 Hyde Park, VT 05655-0102 (802) 888-3306	Manchester Probate Court PO Box 446 Manchester, VT 05254-0446 (802) 362-1410	Marlboro Probate Court Suite 104, 80 Flat St Brattleboro, VT 05301 (802) 257-2898
Orange Probate Court 5 Court Street Chelsea, VT 05038-9746 (802) 685-4610	Orleans Probate Court 247 Main Street Newport, VT 05855 (802) 334-3366	Rutland Probate Court 83 Center Street Rutland, VT 05701 (802) 775-0114	Washington Probate Court 10 Elm Street - #2 Montpelier, VT 05602 (802) 828-3405
Westminster Probate Court PO Box 47 Bellows Falls, VT 05101-0047 (802) 463-3019	Windsor Probate Court PO Box 402 (Cota Fuel Bdg) N. Springfield, VT 05150-0402 (802) 886-2284		