

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.