

**STATE OF VERMONT
VERMONT SUPREME COURT
JUNE TERM, 2020**

Order Amending Rules 66 and 80.3 and Adding Rule 74 of the Vermont Rules of Probate Procedure

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 66 of the Vermont Rules of Probate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 66. INVENTORY AND ACCOUNTS

(a) Inventory.

(1) The inventory of an executor, or administrator, ~~trustee or guardian~~, when required, shall be filed within ~~30~~ 60 days after appointment. The inventory of a guardian, when required, shall be filed within 30 days after appointment. Copies shall be served on all parties entitled to notice. On motion of the executor, administrator, ~~trustee~~ or guardian, the time for filing the inventory may be extended by the court for good cause may extend the time limit for filing the inventory up to 90 days. The court may decide the motion with or without hearing.

(2) If an executor or administrator learns of the existence of property not included in the original inventory, or learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the executor or administrator shall make and file and serve on all parties entitled to notice a supplemental inventory, with the new item, the revised value or description, or any other newly discovered information.

(b) Accounts; notice and hearing. The account of an executor, administrator, ~~trustee~~ or guardian shall be filed in accordance with law. Copies shall be served on persons entitled to notice. The notice of hearing upon the account shall inform each recipient of the obligation to file a written objection in order to contest an account. If a decree of distribution is to follow upon allowance of an account, the notice shall so state. ~~If a trust is contained in the will, the executor shall file along with a final account a petition to commence a trust proceeding.~~

(c) Accounts; form. The account of an executor, administrator, or guardian ~~or trustee~~ shall include the following elements:

(1) Inventory value of the estate at the beginning of the accounting period.

(2) Transactions during the accounting period for receipts and disbursements of principal and income, including: ordinary income, sale of assets, contribution of assets, disbursements or distributions for debts and expenses, distributions to beneficiaries, and the purchase of assets. Transactions should include unrealized gains and losses if that information is readily available and the ending inventory value reflects unrealized gains and losses. Transactions shall include a schedule of attorney's fees and fiduciary fees.

(3) Inventory value of the estate at the end of the accounting period. Ending inventory value should equal the sum of the beginning inventory value, plus receipts, less disbursements. Ending

inventory shall include separate itemizations of historical cost and current value when current value information is readily available.

The court may require that additional information and schedules be included with the account. The account may be prepared in any appropriate form, unless the court, in its discretion, requires that the account be filed in a form substantially similar to an accounting form adopted pursuant to Rule 84. A trustee's fee shall be determined in accordance with the factors set forth in 14A V.S.A. § 708. Any other attorney's fees or fees of a fiduciary other than a trustee shall be justified in terms of the factors for determining the reasonableness of a fee contained in Rule 1.5(a) of the Vermont Rules of Professional Conduct.

(4) Except in the case of an insolvent estate, the final account of an executor or administrator shall include a statement under oath that there are no outstanding expenses of administration or unpaid or unsatisfied debts, obligations, or claims attributable to the decedent's death.

(d) Interim accounts. Unless ~~a fiduciary~~ an executor, administrator, or guardian, or a party requests allowance or a party files a written objection, the court may file an interim account without allowing or disallowing it. Except for good cause shown, interim accountings in a guardianship proceeding shall be accompanied by a motion to allow the accounting each year. In decedents' estate proceedings, trust proceedings and guardianship proceedings in which good cause has been shown, the motion shall be filed no less frequently than every third year.

(e) Accounts; necessity of a written objection. Unless the court directs otherwise, no party who fails to file a written objection to the allowance of an account, specifying the grounds of objection, at least 7 days before the hearing on the account shall be heard in opposition to the account. In the absence of any objections, the court may allow a verified account without hearing.

(f) Appraisals. ~~The fiduciary~~ An executor, administrator, or guardian, may, but unless required by the court, need not, employ one or more disinterested persons to appraise a decedent's estate, ~~a trust estate~~, or the property of a ~~ward~~ person under guardianship.

Reporter's Notes—2020 Amendment

Rule 66 is amended to further clarify its provisions in light of the Vermont Trust Code, 14A V.S.A. §§ 101-1204, and to add more explicit provisions concerning duties under the Rule.

The amendments are intended to make clear that the requirements of the Rule do not apply to a trustee, given the provision of 14A V.S.A. § 201, and to adjust the filing times for the other fiduciaries covered by the section to reflect differences in their roles and the increased discretion to extend the times accorded to the court.

The requirement of a supplemental inventory for omitted or newly discovered assets or information is added as Rule 66(a)(2) to implement 14 V.S.A. § 1053(a) as added by 2017, No. 195 (Adj. Sess.), § 6, effective July 1, 2018. Section 1053(b) requires a hearing on motion of a creditor with a claim of more than \$1,000,

or of a beneficiary entitled to a distribution of more than \$500 in value, filed within 30 days after the filing of an original or supplemental inventory. The court may appoint an appraiser or appraisers to reappraise any property listed in the inventory or appraise any omitted property.

The final sentence of Rule 66(b) is deleted for consistency with 14A V.S.A. § 201.

Rule 66(c)(4), requiring a sworn statement by the executor or administrator that there are no outstanding expenses or unpaid debts or other claims against the estate, is added to provide assurance that the estate will not be reopened after compliance with Rules 66(c)(3) (final inventory) and 60.1(a)(2),(3) (closure of estate upon submission and court approval of fiduciary's report).

The amendments to subdivisions (d) and (f) are intended to provide consistency of terminology with other provisions of the rule.

2. That Rule 74 of the Vermont Rules of Probate Procedure be added to read as follows:

RULE 74. WAIVER OF ADMINISTRATION

(a) A motion to waive administration may be made at the time of filing the petition or at any time before an accounting is due. The motion shall be made under oath and shall state that

(1) the moving party:

(A) if the decedent died testate, is the sole beneficiary of the decedent's estate and has been nominated to serve as sole executor, or

(B) if the decedent died intestate, is the sole heir of the decedent's estate and proposed to serve as sole administrator.

(2) the moving party is the sole fiduciary of the estate;

(3) the decedent owned no real property in the State of Vermont; and

(4) the administration will be completed without supervision of the Probate Division in accordance with the decedent's will, if any, and applicable law.

(b) At any time after a petition to administer the estate has been granted, the court may grant a motion to waive further administration if it finds that

(1) the moving party is the only estate beneficiary under the will of a decedent or the only heir of a decedent who died intestate;

(2) the moving party is the sole fiduciary of the estate; and

(3) the decedent owned no real property in the State of Vermont.

(c) If the court grants a motion to waive administration or to waive further administration, the court shall issue an order waiving the duty to file an inventory, waiving or discharging a fiduciary bond, and dispensing with further filing with the court other than an affidavit of administration.

(d) The filing of the affidavit of administration concludes the administration of the estate and shall be filed not less than six months or more than one year after the date of appointment of the executor or administrator and shall state to the best of the knowledge information or belief of the executor or administrator:

(1) there are no outstanding expenses of administration or unpaid or unsatisfied debts, obligations, or claims attributable to the decedent's estate; and

(2) no taxes are due to the State of Vermont, and tax clearance has been received from the Department of Taxes, a copy of which shall be attached to the affidavit.

(e) If the executor or administrator fails to timely file the affidavit of administration, the executor or administrator shall be in default. If the executor or administrator fails to file the affidavit, or request additional time to file the affidavit, within fifteen days after receiving the notice of default, the court may impose sanctions it deems appropriate, including the revocation of the waiver of administration. Notice of the default shall be provided by first-class mail or in accordance with the 2020 Vermont Rules for Electronic Filing if applicable.

(f) Upon receipt of the affidavit of administration, the court may issue such orders as may be necessary to distribute the assets of the estate to the sole beneficiary or sole heir of the estate.

(g) For purposes of this rule, the fiduciary is the sole heir or beneficiary of the decedent's estate if the fiduciary is the sole first-tier beneficiary of a trust for that person or if fiduciary is the trustee of the trust for that person.

Reporter's Notes

Rule 74 is added to implement the provisions of 14 V.S.A. Chapter 80, §§ 1851-1854, enacted by Act 195 of 2017 (Adj. Sess.), § 12. The statute provides a process for all estates other than small estates opened under 14 V.S.A. §§ 1901-1903, under which, on motion and affidavit that the moving party is the sole beneficiary or heir and sole fiduciary and that there is no real property in Vermont, the court may waive further administration.

The provisions of the Rule track the statute with some variations in language and a few additional features noted below.

Rule 74(a), setting forth the elements of a motion to waive, is similar to 14 V.S.A. § 1852(a).

Rule 74(b), enumerating the findings based on which the court may grant the motion to waive, is similar to 14 V.S.A. § 1852(b).

Rule 74(c), containing the elements of the court's order granting the motion, is similar to 14 V.S.A. § 1852(c).

Rule 74(d), providing for the completion of administration on the timely filing by the executor or administrator of an affidavit that that there are no outstanding administrative expenses and that the State of Vermont has given tax clearance, is similar to 14 V.S.A. § 1853(a) and (b)(1), except that the Rule requires that a copy of the tax clearance be attached to the affidavit. Section 1854 of the statute specifically provides that on submission of the affidavit, the court may close the estate and discharge to fiduciary if §§ 1851 and 1852 have been satisfied.

Rule 74(e) provides that if the executor or administrator does not file the affidavit within the time provided in subdivision (d), or file it within 15 days after notice by first-class or in accordance with the 2020 Vermont Rules for Electronic Filing if applicable, or request additional time, the court may impose sanctions, including revocation of the waiver. The rule is similar to 14 V.S.A. § 1853(b)(2), except that the statutory alternative to first-class mail notice is "other means allowed by the Rules of Probate Procedure."

3. That Rule 80.3 of the Vermont Rules of Probate Procedure be amended to read as follows:

RULE 80.3. SMALL ESTATES

(a) **Commencement.** A small estate may be commenced by filing:

(1) ~~A~~ a petition to open the estate;

(2) a list of interested persons;

(23) ~~T~~the entry filing fee;

(34) ~~A~~ an original death certificate;

(45) ~~A~~ an inventory sworn to by the petitioner, including information or estimates available at the time of filing;

~~(56) A receipt showing that the funeral expenses of the deceased have been paid, or a personal bond in an amount determined by the judge of probate to be reasonable, conditioned for the payment of the funeral expenses of the deceased, within one year from the date of death;~~

and an affidavit of paid and outstanding funeral expenses and any other known or reasonably ascertainable debts of the decedent;

(7) a bond without surety in the amount of the fair market value of the estate; and

(68) ~~T~~he will, if any.

~~(b) Allowance of the will. The court may, in its discretion, waive the notice requirements of V.R.P.P. 4 or specify that they be complied with. No notice and hearing is required if the surviving spouse, if any, and all the heirs at law and next of kin of the deceased consent to the allowance of the will. The notice to beneficiaries of the probate of a will pursuant to 14 V.S.A. § 111 is not necessary in a small estate.~~

~~(c) Objections to allowance of a will; waiver of will. An interested person may object to the allowance of the will by filing a written objection within 21 days after the notice was mailed or last published, or the date of the allowance of the will if no notice is required, whichever is later. A copy of the objection shall be served on the petitioner by first class mail. If an objection is filed the court shall hold a hearing as in estates other than small estates. If no objection is filed, the will shall be allowed without hearing. A spousal election must be filed within the time allowed for a written objection. The court may, in its discretion, waive the hearing provided for in this subdivision~~

(b) Notice of commencement and appointment of fiduciary. An interested party who does not consent to the small estate proceeding in writing shall be provided with notice of the petition and the pending fiduciary appointment and may file any objections with the court within 14 days after receiving the notice. If no objections are filed, the fiduciary appointment and any will offered for admission shall be approved by the court without further notice or hearing.

(d) Order. If the court finds that the requirements for a small estate are met, the court shall issue an order:

(1) that the estate will be considered a small estate;

(2) that the will, if any, has been allowed and that there was no objection to the allowance or, after hearing, the court overruled any objection;

(3) that the person specified in the order is appointed administrator or executor; and

(4) that the duties and responsibilities of the executor or administrator are as herein specified.

(A) If the decedent had a will, the will shall be admitted and letters of administration shall be issued as provided in 14 V.S.A. § 902.

(B) If the decedent did not have a will, letters of administration shall be issued as provided in 14 V.S.A. § 903.

(d) Letters of administration. Letters of administration issued pursuant to Rule 80.3(c)(4) shall be effective for one year after the date of issuance. The court may extend the one-year duration upon motion of the fiduciary for good cause shown.

(e) Creditors' claims; payment of creditors. The executor or administrator may, but is not

~~required to, give notice to creditors pursuant to law. Whether or not notice is given to creditors, the executor or administrator shall pay known debts of the deceased and the funeral and burial expenses of the deceased from the assets of the estate.~~ **Additional inventory.** Within 60 days after the issuance of letters of administration, and at any time thereafter if deemed necessary by the fiduciary, the fiduciary shall conform, correct, or supplement the inventory filed with the petition.

(f) **Distribution; accounting; discharge.** ~~The executor or administrator shall pay over the balance of the estate in accordance with the terms of the will or in accordance with law if there is no will. Within 30 days thereafter, the executor or administrator shall file a report together with such receipts as are required by the court. The reports shall state what debts of the deceased have been paid. On the filing of the report, the court may discharge the executor or administrator without notice or hearing~~ **Payments from the estate.**

(1) ~~The fiduciary may, but is not required to, give notice to creditors pursuant to law. Whether or not notice is given to creditors, the fiduciary shall pay known debts of the deceased and the funeral and burial expenses of the deceased from the assets of the estate.~~

(2) ~~If the estate is solvent after the payment of known debts, the fiduciary shall pay over any remaining balance of the estate as provided by the decedent's will or as otherwise provided by law.~~

(3) ~~If it appears from the record that the estate is insolvent, the fiduciary shall apply for an order of dividend from the court and make payment as set forth in the court's order of dividend.~~

(4) ~~Upon completion of the payments required under this subdivision, the fiduciary shall file an Affidavit of Payment, setting forth the amounts and recipients of each payment.~~

(5) ~~Upon receipt of the Affidavit of Payment, the court may discharge the fiduciary without further accounting or notice. Unless the court otherwise directs, no tax clearance is required to close a small estate.~~

(g) **Closure.** ~~A small estate is deemed closed when the executor or administrator is discharged. Unless the court otherwise directs, no tax clearance is required to close a small estate.~~

(hg) **Affidavit procedure.** In lieu of filing the petition required in (a)(1), when an estate consists solely of one or more assets that may pass in accordance with the terms of the will, if any, or the law of descent and survivor's rights, an interested person, upon paying the entry fee for a small estate, may file an affidavit accompanied by a death certificate and the will, if any, and attesting to the matters set forth in (a)(4) and (5) and that notice has been given to, or consent obtained from, any other interested persons. If the court finds that the facts attested to are determined to its satisfaction, the court may order the asset or assets distributed in accordance with the terms of the will, if any, or the laws of descent and survivor's rights.

(h) **Subsequent claims.** ~~If a discharge is given under this section, any assets distributed in accordance with the terms of the will, if any, or the laws of descent and survivor's rights by the~~

fiduciary shall be subject to claims later established, and 14 V.S.A. §§ 1202 and 1203 shall apply, but fiduciaries shall not be liable to distributees for losses to them when required to reimburse creditors. Each distributee shall have a duty of proportionate contribution for any claims brought against one or more other distributees, not to exceed the amount received by the distributee from the estate.

Reporter's Notes—2020 Amendment

Rule 80.3 is amended for consistency with the statutory provisions governing small estates, 14 V.S.A. Ch. 81, §§ 1901-1903, as amended by Act 36 of 2019, § 1, effective July 1, 2019.

The filings required by Rule 80.3(a) for commencing a small estate now conform to 14 V.S.A. § 1901(a)(2) and (7) by including in Rule 80.3(a)(2) a list of interested persons and, in Rule 80.3(a)(7), a bond without surety. In addition, former Rule 80.3(a)(5) is renumbered (a)(6) and amended to substitute the provision of 14 V.S.A. § 1901(a)(6) of an affidavit of paid and outstanding funeral expenses and other debts of the decedent for the former requirement of a receipt for funeral expenses paid or a bond for their payment within a year from the date of death. In new Rule 80.3(a)(3), formerly (a)(2), “filing fee” is substituted for “entry fee” for consistency with 14 V.S.A. § 1901(a)(3). Rule 80.3(a)(4), formerly (a)(3), calls for “an original” death certificate as in 14 V.S.A. § 1901(a)(4). In Rule 80.3(a)(5), formerly (a)(4), the language, “including information or estimates available at the time of filing,” is added to the requirement of a sworn inventory.

Former Rules 80.3(b) and (c), providing for notice of the allowance of a will and the procedure to be followed if there is objection or if no objection is made, have been deleted. New Rule 80.3(b), entitled “Notice of commencement and appointment of fiduciary,” adopts the language of 14 V.S.A. § 1901(b). The former subdivisions are replaced with the simple provision that an interested party who does not consent is entitled to notice and, presumably, hearing on any objections. If there is no objection, the appointment of the fiduciary and the will are approved “without further notice or hearing.”

Former Rule 80.3(d), entitled “Order,” is renumbered as Rule 80.3(c) and carried forward with the addition of language from 14 V.S.A. § 1902(a) to link the order to new Rule 80.3(d).

New Rule 80.3(d), entitled “Letters of administration,” adopts the language of 14 V.S.A. § 1902(c).

New Rule 80.3(e), entitled “Additional inventory,” adopts the language of 14 V.S.A. § 1902(b).

Former Rule 80.3(f), entitled “Distribution; accounting; discharge” is deleted and replaced with new Rule 80.3(f), entitled “Payments from the estate.” New Rule 80.3(f)(1) carries forward former Rule 80.3(e) providing in general that whether or not the fiduciary gives notice to creditors, the fiduciary is to pay the deceased’s known debts and funeral expenses from the estate. Paragraphs (f)(2)-(5) adopt language of 14 V.S.A. § 1903(a) and (b) concerning further responsibilities of the fiduciary in the event of a solvent or insolvent estate and for the fiduciary’s discharge.

Former Rule 80.3(g), entitled “Closure” is deleted, but its final sentence is incorporated in new Rule 80.3(f)(5).

Former Rule 80.3(h) is renumbered as (g), carrying forward a practice commonly followed where there is a defined asset or assets such as a small bank account.

New Rule 80.3(h) adopts the language of 14 V.S.A. § 1903(c) concerning claims arising after discharge of the fiduciary.

4. That these rules as amended and added are prescribed and promulgated effective August 18, 2020. The Reporter’s Notes are advisory.

5. That the Chief Justice is authorized to report these rules to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 12th day of June, 2020.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice