

ESTATE PLANNING AND
ADMINISTRATION: THE
COMPLETE GUIDE

PROBATE PROCESS OVERVIEW

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CRUCIAL DUE DATES TIMELINE

Following the death of a client, the attorney should be notified by the family and a meeting can be put on the calendar for when the family wishes to meet to discuss the administration of the decedent's estate and arrange to probate the Will. Best practice is for the attorney to retain the original of the Will for safekeeping. Then upon the death of the client, the attorney knows the location of the Will. If the client retains possession of the original, there is a great possibility that the client will lose the Will or forget the location of the original Will. If the Will cannot be found, the family should consult with the attorney who drafted the Will, look in the decedent's personal papers, check the safe deposit box, ask a bank which has been named as fiduciary, look in the decedent's residence (and if there is more than one residence, a search should be conducted of all such residences) and the Court which may be holding the Will (New York Surrogate's Court and Procedure Act ("SCPA") §2507). A Will which cannot be found is presumed to be destroyed or revoked by the testator. Pursuant to SCPA §1407, a lost Will can be admitted in probate only if it can be established that it has not been revoked, execution of the Will is proved that it was in compliance with the New York Estates, Powers and Trusts Law ("EPTL") §3-2.1, and all of the provisions of the Will are proved by two witnesses or by a true and complete copy of the Will. The EPTL provides that a Will must be in writing, signed by the testator in the presence of at least two witnesses who are at least 18 years of age and competent. Establishing these factors can be very difficult. Often, probate is not an option and the client's family must choose intestate administration.

If the Will is in the safe deposit box of the decedent, then a petition may be brought and the Court may issue an ex parte order (also known as a will-search order) directing that the safe deposit box be opened and that such person named in the order inventory the contents of the box in the presence of an authorized person at the institution wherever such safe deposit box is located (SCPA §2003, 20 NYCRR §360.2). The Will, if found, should be delivered personally or by registered mail to the Surrogate's Court clerk.

If a Will is withheld, a proceeding may be brought to compel production of the Will under SCPA §1401 if there is reasonable ground to believe that a person has "knowledge of the whereabouts or destruction of a will of a decedent." Under the New York Penal Law §190.30, it is a felony to conceal a Will or to mutilate or destroy it with the intent to defraud.

Family members may believe that a Will exists even though the decedent revoked the Will prior to his or her death. A Will may be revoked by the testator signing a new Will, stating in writing the intent to revoke the Will, the testator burning, tearing, cutting, cancelling, obliterating, mutilating, destroying the Will (or someone else doing so under the direction of the testator) (EPTL §3-4.1). Confusion about whether the decedent had or did not have a Will can lead to unexpected delays and costs upon the death of the decedent. Therefore, the attorney should stress to the client the importance of family members knowing whether or not the client has a Will and if such client has a Will, then the location of such Will.

When the client dies and the Will is reviewed, the attorney will be able to identify the Executor from the clause in the Will which names the fiduciaries. If the person named in the Will is eligible to serve, the attorney should contact the individual and arrange for a meeting. At the meeting, the attorney should review the procedure for probating the Will and the timeline for the estate administration. The attorney should convey that the person designated must be capable of handling the responsibilities to which he/she will be assigned and must have the time and ability to carry out the estate administration. Please see "Executor's Duties and Powers" section in this article for additional details.

A probate proceeding's purpose is to authenticate the Will so that the decedent's property may be disposed, to appoint and empower the executor to administer the decedent's estate and to appoint trustees if any are nominated under the Will. SCPA §1402 (1)(a) provides that any person in a Will designated as "legatee, devisee, fiduciary or guardian or by the guardian of an infant legatee or devisee or the committee of an incompetent legatee or devisee, or the conservator of a legatee or devisee who has been

designated a conservatee pursuant to article seventy-seven of the mental hygiene law" may bring a probate petition. The probate petition is a written pleading which is verified in accordance with CPLR §3020 and contains the information delineated in SCPA §§304 and 1402(2).

The complete probate petition is filed together with 1) original Death Certificate, 2) original of Last Will and Testament and Codicil, if any, 3) copy of Last Will and Testament together with Affidavit of Comparison (22 NYCRR §207.19), 4) Attorney Certification (22 NYCRR §207.4), 5) Notice of Probate (SCPA §1409) together with Affidavit of Mailing (if there are charitable bequests to an unnamed charity or of an unspecified amount, then the Attorney General must also get Notice), 6) Proposed Decree, 7) Self-addressed stamped envelope in which to forward the copy of the Decree and Letters Testamentary to the attorney's office, 8) Check representing the filing fee and 9) Check representing the fee for Letters Testamentary and Letters of Trusteeship, if necessary (current fee is \$6 per letter). The Surrogate's Court has official forms which can be found in the "Green Book" or by using HotDocs. Additionally, a link to many of these forms can be found at <http://www.nycourts.gov/forms/surrogates/index.shtml>. A sample Probate Petition, Affidavit of Comparison, Attorney Certification, Notice of Probate, Affidavit of Mailing and Decree are attached as Exhibit A. Beginning May 2017, Westchester County requires E-Filing for Surrogate's Court which includes Probating a Will. The filing fee schedule can be found at SCPA §2402 and is currently:

Value of Estate or Subject Matter	Fee Rate
Less than \$10,000	\$ 45.00
10,000 but under 20,000	75.00
20,000 but under 50,000	215.00
50,000 but under 100,000	280.00
100,000 but under 250,000	420.00
250,000 but under 500,000	625.00
500,000 and over	1,250.00

The attorney should verify that the Will does not have any staples removed, different paper, text added between the lines, or erasures before filing the Will. If it does, an explanation must be furnished to the Court for the condition of the Will. For this

reason, the staple should never be removed from the original Will when making copies. The Court has the duty to determine the genuineness of the Will, the validity of its execution, whether or not the testator had capacity even if no objections are brought at the time of probate.

Pursuant to SCPA §708 the designated fiduciary must file an oath stating that "the fiduciary will well, faithfully and honestly discharge the duties of the office and the trust reposed in him or her and duly account for all moneys or other property which may come into his or her hands. The oath shall also describe the office, and state that the fiduciary is not ineligible to receive letters." Typically this Oath and Designation is attached to the back of the Probate Petition. A sample is attached as part of Exhibit A.

All distributees must be served and the process must include the name of the petitioner and if the Will is nuncupative (SCPA §1403). Preferably, the distributees will sign a Waiver of Process and Consent to Probate which avoids the need to serve them and having a citation issued. A sample Waiver and Consent is attached as Exhibit B. If the decedent is not survived by any distributees is survived by only one distributee, or if the distributees are more remote than the issue of the decedent's siblings, then an Heirship Affidavit or Affidavit of Kinship must be filed by a disinterested person. A family tree is required for filing when the distributee relationship exists to the death of another person (22 NYCRR §207.16). A sample Heirship Affidavit is attached as Exhibit C. The Attorney General and the Public Administrator must be cited if there are no known distributees.

A self-proving affidavit for subscribing witnesses usually found as a separate sheet at the end of the Will avoids having to search for witnesses at time of testator's death (SCPA §1406). If there is not a self-proving Will, at least two witnesses must file affidavits providing "such facts as would if uncontradicted establish the genuineness of the will, the validity of its execution and that the testator at the time of execution was in all respects competent to make a will and not under any restraint." A copy of such Affidavit is attached as Exhibit D. Alternatively, if the witnesses will not provide affidavits, then they must be examined before the Court (SCPA §1404).

Under SCPA §2307-a, when a client nominates the attorney as executor, the client must sign an acknowledgment of disclosure (Exhibit E) stating that the client was informed that:

- Any person can serve as an executor;
- Any person serving as an executor is entitled to statutory commissions;
- Any attorney, including the attorney-executor, is entitled to legal fees for legal work performed on behalf of the estate; and
- Absent execution of the acknowledgment of disclosure, an attorney who serves as executor will be entitled to only one-half of the statutory commissions he would otherwise be entitled to receive.

This disclosure must also be filed at the time of probate. Additionally, the executor must file a statement that the executor is an attorney, whether such person (or such person's law firm) will act as counsel and whether such executor was the draftsman of the Will (22 NYCRR §207.17). A Putnam Affidavit is needed whenever there is a bequest to a person in a confidential relationship to the decedent such as an attorney, doctor, accountant or clergy. In such a case, the attorney should also submit a Putnam Affidavit to explain the circumstances surrounding the gift (see In re Putnam's Will, 257 NY 140, 177 N.E. 399 (1931)). Also, if the attorney is designated as the fiduciary, a Weinstock Affidavit may be needed to explain why the decedent appointed the attorney in such capacity (see Matter of Weinstock, 40 NY2d 1, 351 NE2d 647, 386 NYS2d 1 (1976)).

Any person who is adversely affected by the probating of the Will may file objections to probate (SCPA §1410, 22 NYCRR §207.26). For this reason, the practice of drafting Codicils should be discouraged. If a Will is modified through use of a Codicil, then both the Will and the Codicil must be offered for probate. Anyone whose interest was adversely affected by the Codicil now has standing to object to probate. If instead, a new Will was signed, then the parties adversely affected by the change would not have standing to object since the old Will is not offered for probate. Such party, if not a distributee, will not receive a Notice of Probate and may not discover that he or she has been disinherited. It should be noted that such party will still have standing if he or

she is a distributee and will inherit less than his or her intestate share under the Will. In all cases, process must issue to the distributees (or they may be asked to sign a Waiver of Process).

Adversely affected parties and distributees may contest a Will on the following grounds:

- Capacity - standard is that the testator:
 - Understood the nature and extent of his or her assets
 - Knew who he or she would normally be expected to provide for, such as a spouse
 - Knew what his or her Will provides.
- Fraud, duress or undue influence
- Forgery
- Will executed without valid Will formalities
- Existence of a later Will

Therefore, to protect the remaining beneficiaries from an expected Will contest, the testator should consider giving the intended disinherited distributee a small bequest in conjunction with including an interorem provision in the Will (EPTL §3-3.5(b)). By contesting the Will, the person stands to lose the small bequest. In making this decision, the testator should consider that a Will contest will lead to increased legal fees and delays in making distributions to beneficiaries. It should be remembered that all distributees receive a notice of probate. Therefore, there is no way to avoid a distributee discovering that he or she has been disinherited, since such distributee will have the right to see the Will, will know who did inherit and will have the right to contest the probate of the Will.

An interested party as defined in SCPA §103(39) may object to the nominated fiduciary by filing objections (SCPA §709). Such document shall indicate why the nominated individual is not qualified and must state the interest of the objecting party.

The executor cannot dispose of any assets before letters testamentary are issued except for the purpose of paying funeral expenses. In such a case the executor can also take necessary action to preserve the estate's assets (EPTL §11-1.3). Therefore, an

executor may also file a request for issuance of preliminary letters testamentary which give the preliminary executor all of the fiduciary capacities of an executor with full letters testamentary other than the power to pay or distribute assets to beneficiaries (SCPA §1412). Such a request may be useful when the interested parties are eager to begin the administration process of gathering the assets and paying bills and must act before probate of the Will is complete due to a delay (i.e. parties must appear in Court on return date due to issuance of citation, infants are involved and the Guardian-ad-litem must file a report or the nominated executor cannot determine necessary parties). The decree granting probate will include a provision revoking the preliminary letters.

After the Executor is granted Letters Testamentary by the Court, the attorney should advise the Executor that EPTL §11-1.5(a) provides that an executor is “not required to, pay any testamentary disposition or distributive share before the completion of the publication of notice to creditors or, if no such notice is published, before the expiration of seven months from the time letters testamentary or of administration are granted.” The reason for this rule is to ensure that there are sufficient assets to pay the administration expenses, funeral expenses, debts of the decedent and taxes. Even following the expiration of the seven months, the executor may not know of all of the estate’s liabilities. Therefore, the executor can partially satisfy the bequests or distributive share and ensure a reserve large enough to cover anticipated and unanticipated claims and expenses.

When making a partial distribution to a beneficiary, the executor should first require the beneficiary to execute a receipt and release indicating receipt of the payment. A second receipt and release agreement should be signed by the beneficiary upon receipt of the final payment. If the beneficiary believes that the executor is unduly delaying distribution of the assets, the beneficiary can bring a proceeding under SCPA §2102(4) to require the executor to pay the legacy or distribute share. Such a proceeding can be avoided by ensuring good communication between the executor and the beneficiaries. The executor should document the reasons for the delay in payments and the predicted payment schedule to show good faith and due diligence in carrying out fiduciary duties.

The executor can commence an action for wrongful death but it must be brought within two years of the decedent's death (EPTL §5-4.1). If the estate has a charitable interest, other than a specific legacy, it must register with the New York State Attorney General's Charities Bureau pursuant to EPTL §8-1.4 and 13 NYCRR §92.2 within six months of Letters Testamentary being issued.

The attorney should also discuss whether or not the beneficiaries wish to disclaim any part of or all of the inheritance. Disclaimers are a form of post mortem planning which allow for altering the beneficial interests of the beneficiaries by the beneficiary refusing to accept the bequest. Disclaimers are often used to balance out estates for estate tax purposes and to pass wealth to a lower generation due to the wealth of the intervening generation. The reasons for wanting to make a disclaimer are numerous. Chief among them is the need to utilize the decedent's unified credit. Currently, the applicable exclusion amount, or unified credit, is \$5,490,000. The available applicable exclusion upon death will be reduced by the amount used to shelter lifetime gifts from federal gift tax. Because the law is so much in flux and the credit so high, many estate planners are using Disclaimer Trusts in place of the mandatory Credit Shelter Trust. Therefore, the Will may include a provision that allows the surviving spouse to disclaim inherited property, real or otherwise (whether by operation of law or through the Will), so that it can be added to a Disclaimer Trust which would use the testator's applicable exclusion amount. Please see Article V "Common Trust Structures and Their Tax Consequences" in these materials for a discussion of Disclaimer Trusts.

The requirements for a qualified disclaimer are contained in EPTL §2-1.11(c)(2), the Internal Revenue Code of 1986, as amended (the "IRC"), §2518(b) and in Treas. Reg. §25.2518-2 and a form of disclaimer is attached hereto as Exhibit F:

- Irrevocable
- In writing.
- Within 9 months of taxable transfer.
- No acceptance of interest or benefits

- Disclaimed interest passes without direction and pass to someone other than disclaimant (unless it is for the benefit of the surviving spouse).

A beneficiary may elect to disclaim his or her right to inherit (EPTL §2-1.11 and IRC §2518). The final treasury regulations were issued on December 31, 1997. A qualified disclaimer must be made in writing and filed within nine (9) months of the decedent's date of death or nine (9) months after the taxable transfer occurs in the case of a disclaimer not related to the death of a decedent (EPTL §2-1.11(b)(2) and §25.2518-2(c)). A beneficiary can disclaim interests under the decedent's Will or any other non-testamentary assets (i.e. trust agreement, life insurance, retirement accounts and plans, joint or totten trust accounts, etc.). Additionally, powers of appointment can be disclaimed as can a distributive share under EPTL §4-1.1 and Treas. Reg. §20.2041-3(d). Such an interest can be pecuniary (Treas. Reg. §25.2518-3(c)), an interest in a trust, a specific asset, life insurance and retirement benefits (PLR 200105058). See also, EPTL §2-1.11(b)(1).

A qualified disclaimer must be in writing. The writing must identify the interest in property being disclaimed and be signed either by the disclaimant or by the disclaimant's legal representative (Treas. Reg. §25.2518-2(b)(1)). It must be delivered to the transferor of the interest, the legal representative of the transferor or the holder of legal title to the property to which the interest related (Treas. Reg. §25.2518-2(a)(3) and (b)(2)).

The effect of a qualified disclaimer for a Federal estate, gift and generation-skipping, transfer tax, is that the property is treated as if it had never been transferred to the person making the qualified disclaimer. Instead, it passes directly from the transferor of the property to the person entitled to receive the property as a result of the disclaimer. Treas. Reg. §25.2518-1(b).

Once the completed gift is made, the disclaimant has nine (9) months to make the disclaimer (see Treas. Reg. §25.2518-2(c)(3) and (c)(5) at example 6 and EPTL §2-1.11(c)(2).) When the beneficiary is a minor, the disclaimer must be filed within nine (9) months after the disclaimant attaining the age of twenty-one (21) years

(see Treas. Reg. §§25.2518-2(c)(1)(ii), (d)(3) and (d)(4) at examples (9) and (11)). The Courts have held that an extension of time to file an estate tax return does not extend the nine (9) month period for filing a disclaimer. This nine (9) month time frame is hard and fast for filing qualified disclaimers. It is important to note that a disclaimer can be made after the nine (9) month period by filing a petition with the court showing reasonable cause for the extension (EPTL §2-1.11(c)(2)). However, it will not be considered a qualified disclaimer and a taxable gift will occur upon the passing of the interest from the disclaimant to the next interested party.

Disclaimers are irrevocable once they are made (EPTL §2-1.11(h) and Treas. Reg. §25.2518-2(a)(1)). The beneficiary cannot disclaim any asset which such beneficiary already accepted (Treas. Reg. §25.2518-2(d) and EPTL §2-1.11(g)). Accepting income from the property also will disqualify the disclaimer (see PLR 9243024). However, continuing to live in the residence which was jointly held does not constitute the acceptance of the decedent's half of the joint interest, whether as tenants-by-the-entirety or as tenants-in-common (Treas. Reg. §25.2518-2(d)(4) at example (8), PLR 8508079). The IRS has found that in the case where the residence was owned solely by the decedent and the surviving spouse continues to live it, such continued residency constitutes acceptance of the asset (PLR 8817061).

In general, under Treas. Reg. §25.2518-2(c)(4)(i), a disclaimer of an interest in joint tenancy must be made within nine (9) months of the transfer creating the joint tenancy not at its vesting (see also, Estate of Edward J. O'Brien, T.C. Memo 1988-240 (May 26, 1988)). However, a qualified disclaimer can still be made of the survivorship interest passing by operation of law upon the death of the first joint tenant so long as it is within nine (9) months of the death of the joint tenant and is severable. This result was due to the IRS issuing an Action On Decision 1990-06 when it acquiesced in McDonald v. Comm'r, 853 F.2d 1494 (8th Cir. 1988). In this Decision, the IRS stated that:

Where a joint tenant has the right to sever the joint tenancy or cause the property to be partitioned under state law, the Service will no longer litigate that the transfer relative to which the timeliness of the disclaimer of a survivorship interest is measured refers to the transfer creating the joint tenancy. The Service will also no longer contend that a joint tenant

cannot make a qualified disclaimer of any portion of the joint interest attributable to consideration furnished by that joint tenant.

The final regulations reiterated this decision in Treas. Reg. §25.2518-2(c)(4)(i)-(iii) and adopted the rationale of the Fourth, Seventh and Eight Circuits laid out in Kennedy v. Commissioner, 804 F.2d 1332 (7th Circuit 1986), McDonald v. Comm’r, 853 F.2d 1494 (8th Cir. 1988) and Dancy v. Commissioner, 872 F.2d 84 (4th Circuit 1989). Additionally, tenancy-by-the-entirety was given the same treatment as a joint tenancy with right of survivorship because of the concern that couples do not focus on the impact of their decision on their future ability to disclaim when they buy a home (see also Treas. Reg. §25.2518-2(c)(4)(ii)).

If the person funding a joint bank account can withdraw all of the money then there is no completed gift to the other joint tenant (Treas. Reg. §25.2518-2(c)(4)(iii)). The surviving joint tenant can disclaim the entire account within nine (9) months of the death of the funding joint tenant (Treas. Reg. §25.2518-2(c)(5) example (9)). However, if the surviving joint tenant contributed assets to such account, then such contributed property may not be disclaimed. Under Treas. Reg. §25.2518-3(b), the disclaimant can disclaim an undivided portion. EPTL §2-1.11(c)(1) covers disclaimers of jointly held interests.

The final component to the disclaimer is that the disclaimed interest must pass without any direction on the part of the disclaimant (Treas. Reg. §25.2518-2(e)). Additionally, it cannot pass in any form to the disclaimant. For example:

\$100,000 is left in trust for John but if he predeceases, the bequest lapses and becomes part of residuary. The residuary is left to the Decedent’s two children, one of whom is John.

John cannot receive his share of the \$100,000 as part of the residuary. He would need to file a second renunciation disclaiming his one-half interest in the \$100,000 under the residuary clause.

There is an exception to this criteria and that is if the disclaimant is the spouse (Treas. Reg. §25.2518-2(e)(2)). For example:

Residuary is left entirely to the surviving spouse. If spouse disclaims some or all of the residuary, then disclaimed amount passes into disclaimer trust for benefit of surviving spouse. However, the surviving spouse cannot retain the right to direct the beneficiary enjoyment of the property. Therefore, the disclaimer trust cannot contain a power of appointment exercisable by the spouse. Treas. Reg. §25.2518-2(e)(2) and §25.2518-2(e)(5) example (4) and EPTL §2-1.11(f).

Disclaimers are filed in Surrogate's Court and must be accompanied by an affidavit of the disclaimant that he or she has not received any consideration for making such disclaimer from someone whose interest is accelerated by the disclaimer (a copy of which is attached hereto as Exhibit G). Notice of the renunciation, including a copy of the renunciation, must be served personally on the fiduciary directed to make the disposition or upon the person or entity having custody of the disclaimed asset(s) and by mail on all persons interested in the matter (a copy of which is attached hereto as Exhibit H together with an affidavits of service). Once the disclaimer is accepted by the Court, the filing of the disclaimer has the same effect as those the disclaimant had predeceased the creator of the interest or the decedent, as the case may be (EPTL §2-1.11(e)).

In addition to the person with the interest in the asset to be disclaimed, when authorized by the Court a renunciation may be made by the guardian of an infant, a committee of an incompetent, the conservator of a conservatee, a guardian under MHL Article 81 and by the personal representative of a decedent (EPTL §2-1.11(d)) (a copy of a Petition requesting permission to file a disclaimer on behalf of a decedent is attached hereto as Exhibit I). Additionally, if a power of attorney gives the attorney-in-fact the authority to make a disclaimer, then such a disclaimer is authorized. However, if the grantor of the power of attorney is disabled at the time of the disclaimer, then Court permission is required under EPTL §2-1.11(d)(6).

Treas. Reg. §25.2518-3(a) covers partial disclaimers as does EPTL §2-1.11(c)(1) and (f). Additionally, a disclaimant may accept one disposition and disclaim another. Renouncing a fractional interest only serves to renounce that specific part of the interest and not the entire interest. For example:

\$100,000 is bequeathed to John but if he predeceases, the bequest lapses and becomes part of residuary. John can renounce \$50,000 and accept \$50,000.

Additionally, if an income interest and a remainder interest are bequeathed to a person, such person can disclaim the income interest and keep the remainder interest. If the beneficiary disclaims an income interest and a remainder interest in specific trust property, then those specific assets must be removed from the Trust in order for the disclaimer to be qualified (Treas. Reg. §25.2518-3(a)(2)). The examples found at Treas. Reg. §25.2518-3(d) illustrate the provisions of partial disclaimers.

COMMUNITY PROPERTY LAW IN ESTATE ADMINISTRATION

While New York is not a community property state, it adopted the Disposition of Community Property Rights at Death statutes on September 1, 1981 (EPTL §6-6.1, et. seq.) to cover the disposition of assets of New Yorkers who moved to New York after having resided in and acquired property in a state recognizing community property rights. For example, if the client sells real property in California and then moves to New York where the client uses the sale proceeds to purchase a new home, the client can invoke community property rights as to the new home even though it is New York real property. As a result, the decedent is deemed to own 50% against which the surviving spouse cannot elect to take an elective share. The remaining 50% passes to the surviving spouse (EPTL §6-6.3).

INTESTACY RULES

An administration proceeding's purpose is to dispose of the decedent's property when he or she dies without a Will and to appoint and empower the administrator to administer the decedent's estate. When a person dies without a Will, such person is considered to have died intestate (SCPA §103(28)). Article 4 of the EPTL governs this situation and the administration petition can be found at Exhibit J. The Surrogate's Court has official forms which can be found in the "Green Book" or by using HotDocs. Additionally, a link to many of these forms can be found at

<http://www.nycourts.gov/forms/surrogates/index.shtml>. The mandatory E-Filing will also apply to administration proceedings in Westchester County. The filing fee schedule can be found at SCPA §2402(7) and is currently:

Value of Estate or Subject Matter	Fee Rate
Less than \$10,000	\$ 45.00
10,000 but under 20,000	75.00
20,000 but under 50,000	215.00
50,000 but under 100,000	280.00
100,000 but under 250,000	420.00
250,000 but under 500,000	625.00
500,000 and over	1,250.00

Under intestacy, the decedent's assets pass to such person's distributees. Pursuant to EPTL §4-1.1(a)(1), if a decedent is survived by a spouse and issue, the spouse inherits the first \$50,000 plus 50% of the balance of the decedent's estate and the issue inherit the remaining 50% of the balance of the decedent's estate. In most cases, this distribution plan is not the plan desired by the decedent. If a proceeding is needed to determine who are the distributees, a petition can be brought under SCPA §2225 to show that all efforts have been made to locate distributees. In order to avoid having a client die intestate, the attorney must remind clients to come in to meet, review drafts and schedule a time to sign the Will.

A further complication is the appointment of an administrator to handle the administration of the decedent's intestate estate. Pursuant to SCPA §1002(1), any person who is interested in the estate, any person agreed upon by all distributees, public administrator, chief fiscal officer of the county, a creditor or a person interested in an action in which the decedent is a party may bring a petition to serve as administrator. This large class of potential appointees can lead to the appointment of someone not familiar with the estate, can lead to litigation if multiple parties wish to serve, can lead to delay as the decision is made as to who will serve and can cause unnecessary expenses due to the delays and litigation. A Will would avoid this problem since the Will appoints an Executor. Certainly the interested parties in a probate proceeding can also litigate.

However, the risk is minimized as compared to an administration proceeding. It should be noted that SCPA §1001 provides an order of priority to those who are eligible to receive Letters of Administration. The surviving spouse, followed by the children, is given preference. However, it is possible that had the decedent drawn a Will, he or she would not have named the surviving spouse as his or her personal representative. This fact again highlights the importance of clients making educated choices as to who is best to serve in fiduciary capacities rather than leaving the decision to the Courts which are governed by Article 10 of the SCPA.

Pursuant to SCPA §708 the designated administrator must file an oath stating that "the fiduciary will well, faithfully and honestly discharge the duties of the office and the trust reposed in him or her and duly account for all moneys or other property which may come into his or her hands." The oath shall also describe the office, and state that the fiduciary is not ineligible to receive letters. Typically this Oath and Designation is attached to the end of the Administration Petition. A sample is attached as part of Exhibit J.

All distributees must be served and the process must include the name of the petitioner (SCPA §1005). See Notice of Application and Affidavit of Mailing attached as Exhibit K. Preferably, the distributees will sign a Waiver of Process and Consent to Administration which avoids the need to serve them and having a citation issued. A sample Waiver and Consent is attached as Exhibit L. If the decedent is not survived by any distributees, is survived by only one distributee, or if the distributees are more remote than the issue of the decedent's siblings, then an Heirship Affidavit or Affidavit of Kinship must be filed by a disinterested person. A family tree is required for filing when the distributee relationship exists to the death of another person (22 New York Uniform Rules for Surrogate's Court ("NYCRR") §207.16). A sample Heirship Affidavit is attached as Exhibit C. The Attorney General and the Public Administrator must be cited if there are no known distributees.

Once an administrator is appointed by the Court, he or she will have to be bonded (SCPA §805). Had the decedent had a Will, the surety bond requirement could have

been waived. Such a waiver would have reduced the cost of administration and is often a "boiler plate" provision in a Will.

If a minor child inherits from a deceased parent, the Court will appoint a guardian of the property of the infant, who can be the surviving parent, and upon the person of the infant if there is no surviving parent (SCPA §1702) upon petition by a person on behalf of the infant (SCPA §§1703, 1704). If there are multiple children under the age of eighteen years, then a separate petition must be brought on behalf of each such infant (22 NYCRR §207.11). A bond is required for the property of the infant (SCPA §1708). If there is no surviving parent, multiple petitions could be brought by various family members and friends of the infant. The Court will then be forced to decide a matter that would have been better decided by the parents in a Will. Once a guardian is appointed, inherited funds will be held for such child in a guardianship account. Whenever funds are needed for such child, a petition must be made to the Court by the guardian requesting such funds for the support and education of the child (SCPA §1713). The Court in its discretion does not need to grant such request or can opt to grant such request in part. The process is lengthy and costly and can have the disastrous result of the Court denying funds that the infant's parent may have wished such infant to have. Again, the Court is forced to decide a matter that would have been better decided by the parents in a Will or by designated Trustees of a trust for the benefit of such infant. Additionally, the guardian must file an annual account with the Court (SCPA §1719). Such a requirement causes unnecessary costs.

The executor cannot dispose of any assets before letters of administration are issued. Therefore, the Court can grant temporary letters of administration when there is a delay, an interested party cannot be found or when an interested party is a prisoner of war (SCPA §901). Temporary letters of administration give the temporary administrator all of the fiduciary capacities of an administrator with full letters of administration with whatever limitations are imposed by the Court (such as distributing assets) (SCPA §903).

Under SCPA §1007, when an administrator fails to complete his or her duties and then ceases to serve, the court can appoint letters of administration de bonis non

("d.b.n.") to an eligible person. The proceedings are the same as the application for the original letters of administration. However, the court may refuse to issue letters of administration d.b.n if distribution of the estate is possible under SCPA §2207 which governs the situation where a fiduciary dies while in office, even to the point of allowing the fiduciary of a deceased fiduciary the rights and powers of such deceased fiduciary.

EXECUTOR'S DUTIES AND POWERS

In New York, a personal representative "is a person who has received letters to administer the estate of a decedent" (EPTL §1-2.13). If there is no Will, the personal representative is the Administrator and if there is a Will then this person is called the Executor. Typically, the decedent's Will contains an article which names the executor. The executor (or executrix in the case of a woman, although the term executor is often used for both genders) is the person who carries out Testator's wishes upon death of Testator upon receipt of Letters Testamentary from Surrogate's Court (SCPA §103(20)). All persons are able to qualify as executor, except for infants, incompetents, non-domiciliary alien (other than a foreign guardian under SCPA §1716(4) or one who serves with multiple fiduciaries at least one of whom is a New York resident), felon, someone who has a history of substance abuse, dishonesty, improvidence, want of understanding or otherwise unfit for office or someone who cannot read and write English (SCPA §707). If the person is eligible to serve, the attorney should contact the individual and arrange for a meeting.

When a fiduciary has an interest in the estate or trust, all transactions must be treated with extra care to avoid the appearance of self-dealing. In Matter of Kinzler, 195 A.D.2d 464, 600 N.Y.S.2d 126 (2d Dep't 1993) the Court reviewed the sale of the decedent's residence to one of the beneficiaries, who was also a testamentary trustee under the Will. In this case, the Court found that the executor had a conflict of interest with regard to the sale of real estate and found evidence of self-dealing. The Court stated that "[a] person standing in the relation of a fiduciary capacity, cannot deal with or purchase the property, in reference to which he holds that relation." Id. at 466, 600

N.Y.S.2d 126 at 126. The court further noted that the executor's cash distribution of \$50,000 to his wife, and only the assignment of a purchase money mortgage for the property to the trust was prejudicial and discriminatory because "[a]n executor must at all times discharge his fiduciary duties so that all legatees are treated in like manner and without prejudice or discrimination." Id.

The executor's powers are outlined in EPTL §§11-1.1, 11-2.1, 11-2.2, 11-A-1.3 and are extensive. In addition to these powers, the decedent's Will can give the executor (and other fiduciaries such as trustees) additional powers or can limit the executor's powers. In general, the executor is responsible for gathering all assets, preserving the assets, closing all of the decedent's accounts, collecting and paying bills presented to the estate, filing paperwork, disposing of tangible personal property, distributing assets according to the Will and preparing tax returns. The executor is also responsible for obtaining a tax identification number for the estate. However, more often than not, the executor hires an attorney and/or accountant to handle such actions. The executor may find it makes sense to also hire brokers and investment advisors.

The executor has the authority to continue the decedent's business under SCPA §2108. He or she may petition the Court if the decedent was the sole owner and the business should be continued in the best interest of the estate. Additionally, the executor has sixty days from the earlier of being appointed as executor or the last day of the company's fiscal year of the year in which the decedent died to decide whether or not to terminate the decedent's Subchapter S Corporation.

Provisions in Wills and Trusts granting the fiduciary the sole and complete discretion to distribute all estate and trust assets to the beneficiaries are generally not subject to judicial review when the fiduciary is acting properly and in good faith. In In re Jas' Will, 132 N.Y.S.2d 659 (1954), the Will provided that the income of the trust be paid in the "sole and uncontrolled judgment and discretion of my trustees." The court held this provision was valid and the courts cannot interfere with a proper exercise of this discretion. This standard has been upheld time and again in New York (*see In re Lifschutz' Will*, 220 N.Y.S.2d 617, 618, citing Matter of Connolly, 130 N.Y.S. 194

(1911), New York Trust Co. v. Black, 164 N.Y.S. 967 (1917), In re Hayden's Estate, 16 N.Y.S.2d 119, 122, 126 (1939), and Matter of Brettell's Estate, 29 N.Y.S.2d 219 (1941)).

In instances where there are allegations of bad faith, abuse of discretion, arbitrary action, or fraud, the court may review the fiduciary's discretion (see In re Carter's Estate, 182 N.Y.S.2d 599, 601 (1958)). However, even in these instances, the court may not interfere and exercise this fiduciary discretion (Matter of Messer, 231 N.Y.S.2d 201, 205 (1962)). The Court may not rule on whether it finds payments made (or not made) in carrying out the discretionary distribution to be merely "unreasonable." The Court may only apply the higher standard of an "abuse" of discretion (*see* Re. 3d Trusts § 50 (West 2015)).

While the clause "...in [the Trustee's] sole discretion" is not subject to judicial review, the fiduciary is still responsible for acting appropriately. The clause merely signals to the Court that the testator intended to grant the fiduciary "the greatest latitude permitted by law in exercising discretionary judgment" (In re Trusts for McDonald, 100 A.D.3d 1349, 1350 and 1351 (2012)). The Court understands that the fiduciary is to have the broadest discretionary power and that proper application of this power is not an abuse of power or cause for judicial review.

Pursuant to SCPA §103(19), the estate is "[a]ll of the property of a decedent, trust, absentee, internee or person for whom a guardian has been appointed as originally constituted, and as it from time to time exists during administration." EPTL §1-2.63 defines estate as "(a) [t]he interest which a person has in property. (b) The aggregate of property which a person owns." Following the client's death, the executor should prepare a list of all of the decedent's 1) real estate, 2) stocks and bonds, 3) mortgages, notes and cash, 4) insurance on the decedent's life, 5) jointly owned property, 6) trust assets, 7) annuities and retirement accounts and 8) any other assets. Each asset will need to be valued as of the decedent's date of death and on the sixth month anniversary of the decedent's date of death for alternate valuation purposes. The assets and their values will be accounted for on the decedent's federal estate tax return and on the decedent's New York estate tax return. Additionally, an inventory of all of the assets and their values is

required for the Inventory which must be submitted to Court within nine months from the date Letters Testamentary are issued (See New York Uniform Rules for Surrogates Court at 22 NYCRR §207.20). This Inventory contains both probate and non-probate assets. See sample form of Inventory attached as Exhibit M.

When meeting with the executor, asking for this detailed asset list is crucial. Therefore, attorneys should be provided with a list of all of the decedent's assets including brokerage accounts, cash, house/apartment., life insurance, IRAs, etc. including approximate values and current beneficiaries and how they are owned (i.e., client's name, joint, in trust, etc.). The executor should provide copies of insurance policies (life, disability, etc.), current insurance beneficiary forms and current retirement account beneficiary forms. If the decedent had a mortgage or a loan, the executor should provide a copy of all documentation pertaining to it. If the decedent owned real property, a copy of the deed should be given to the attorney. An essential item is a copy of the decedent's most recent income tax return. The tax return provides clues to assets clients have all but forgotten. An inventory of items in the decedent's safe deposit box should be given to the attorney, and the location of the safe deposit key should be divulged. If the decedent owned an interest in a corporation or partnership, the executor should provide the attorney with copies of all documents relating to such entity, including, but not limited to, operating agreements, shareholder agreements, partnership agreements, certificates of incorporation, by-laws and recent income tax returns. The attorney should inquire as to whether the decedent had any patents or copyrights. Also, documentation should be given to the attorney with regard to all non-US assets. Finally, the executor should provide copies of any trusts which the decedent created or which were created for the decedent's benefit. By having this information before a client dies, the attorney is better able to assist the executor in gathering assets upon the client's death. The attorney's file will serve as a roadmap to locate the assets. Also, if there are any complicated assets such as interests in partnerships or corporate entities, obtaining the governing documents and valuation information is much easier while the client is alive to assist in the process versus waiting until after the client dies.

A review of the Will sometimes yields information about previously unknown assets. If the executor is aware of property belonging to the decedent but which is not being turned over to the estate, the executor may bring a petition to discover such withheld property and/or information about such property (SCPA §2103).

The executor cannot dispose of any assets before letters testamentary are issued except for the purpose of paying funeral expenses. In such a case the executor can also take necessary action to preserve the estate's assets (EPTL §11-1.3). Therefore, an executor may also file a request for issuance of preliminary letters testamentary which give the preliminary executor all of the fiduciary capacities of an executor with full letters testamentary other than the power to pay or distribute assets to beneficiaries (SCPA §1412). Such a request may be useful when the interested parties are eager to begin the administration process of gathering the assets and paying bills and must act before probate of the Will is complete due to a delay (i.e. parties must appear in Court on return date due to issuance of citation, infants are involved and the Guardian-Ad-Litem must file a report or the nominated executor cannot determine necessary parties). The decree granting probate will include a provision revoking the preliminary letters.

All property received by the executor shall be kept separate from such person's personal assets (EPTL §11-1.6). They shall be titled in the name of the decedent's estate until distributed to the proper beneficiaries. The executor must secure all property which comes into his or her possession and arrange for appraisals as of the decedent's date of death. Therefore, the executor should consider the need to change locks on real property, installing an alarm system (or changing the code and password) and alerting the police and the insurance company that the property will be vacant. The executor should notify the post office of a forwarding address for mail. This step is essential to ensure that all assets are marshaled and that the executor has notice of all claims against the estate. Additionally, the executor should discontinue all non-essential services such as newspaper delivery and cancel all credit cards. The executor should ensure that he has all original stock certificates, checkbooks and passbooks, check the maturity dates on bonds and CDs and should also review contractual obligations. All artwork, jewelry and other

items of tangible personal property should be inventoried and appraised. In addition, the executor should confirm that there are no items of tangible personal property being held in storage. The executor must send letters to banks and brokers notifying them of the decedent's death and that all powers of attorney on file at such institution are void, requesting that the assets be valued as of the decedent's date of death (for stocks it is the mean of the high and low value on the date of death), requesting information about income and/or dividends owed to the decedent at the time of his or death and request that the accounts be transferred into the name of the decedent's estate. He or she should contact the life insurance companies to request the Life Insurance Statement Form 712s for all life insurance policies. These forms provide the values of the insurance and are required exhibits for the estate tax returns. Often letters testamentary and a death certificate will need to accompany these letters of instruction. The executor should contact the Department of Social Security and the Department of Veterans Affairs regarding death benefits and survivor benefits. Finally, the executor should contact the accountant to verify that all assets have been found and so that the accountant can assist with any business valuations and the completion of any of the decedent's income tax returns.

The executor must understand that each asset should be evaluated and should be either retained or sold based on the performance of such asset, the cash needs of the estate for debts, expenses and beneficiaries' needs. Keeping detailed records, such as diary entries, will offer protection against claims of mismanagement and will help in limiting the executor's liability. Regardless, the executor is liable for assets of the estate under his control beginning on the date Letters Testamentary are issued to such individual (SCPA §808, EPTL §11-4.7). Such executor is held to the prudent investor standard outlined in EPTL §11-2.3.

This prudent investor standard, in short, is that a fiduciary's standard of care in the management of an estate or trust is that of a person of ordinary prudence would exercise in the management of his or her own affairs. See Matter of Bello, 157 Misc.2d 226, 596 N.Y.S.2d 340 (1993). Reasons to probe whether this standard has been violated

are situations where there has been a loss in the value of the assets. In such a situation, the fiduciary may be found to have acted negligently and therefore, liable. See Estate of Rothko, 56 A.D.2d 499, 392 N.Y.S.2d 870, aff'd 43 N.Y.2d 305, 401 N.Y.S.2d 449, 372 N.E.2d 291.

In an accounting proceeding, the objectant has the initial burden of submitting evidence showing that the amounts in question are inaccurate or incomplete. In re Robinson, 282 A.D.2d 607, 724 N.Y.S.2d 424 (2d Dep't 2001); Matter of Estate of Schnare, 191 A.D.2d 859, 860, 594 N.Y.S.2d 827, 828 (3d Dep't 1993). Once that showing has been made, the burden shifts to the fiduciary to prove, by a preponderance of the evidence, that the account is accurate or complete. 191 A.D.2d 859, 860, 594 N.Y.S.2d 827, 828. Where the objectant is questioning the sale of a security or other asset, the fact that there was a loss does not automatically prove that the fiduciary violated the standard. Instead, "where a trustee or other fiduciary acts in good faith with reasonable care and unmotivated by self gain or personal dealing, he may not be surcharged for a shrinkage in [its] value . . . due to economic conditions over which he had no control." In re Weinberg's Will, 69 N.Y.S.2d 748, 752 (Sur. Ct. 1946) (quoting Matter of Kramer's Estate, 172 Misc. 598, 606, 15 N.Y.S.2d 700, 707 (Sur. Ct. 1939)). In In re Yund's Estate, 152 Misc. 785, 274 N.Y.S. 831 (Sur. Ct. 1934) the court dismissed objections in an accounting proceeding regarding the loss on the sale of bank stock by finding that there was no fraud or willful wrongdoing, and thus the executors exercised ordinary prudence and discretion in the sale. In this case, the fiduciary was able to prove the lack of market for the stock and the difficulty others had selling their shares. Id. at 787, 274 N.Y.S. at 834.

ADMINISTRATION PROCESS CHECKLIST

A useful checklist is attached as Exhibit N.

EXHIBIT A

STATE OF NEW YORK

Filing Fee Paid \$ _____

SURROGATE'S COURT: COUNTY OF _____
X

_____ Certs \$ _____
_____ Certs \$ _____

PROBATE PROCEEDING,
WILL OF _____
a/k/a _____

\$ _____ Bond, Fee: \$ _____
Receipt No: _____ No: _____

Deceased.

PETITION FOR PROBATE AND:

- Letters Testamentary
- Letters of Trusteeship
- Letters of Administr. c.t.a.

X

File No. _____

To the Surrogate's Court, County of _____

It is respectfully alleged:

1.(a) The name, citizenship, domicile (or, in the case of a bank or trust company, its principal office) and interest in this proceeding of the petitioner are as follows:

Name: _____

Domicile or Principal Office:

_____ (Street and Number)

(City, Village or Town)

(State)

(Zip Code)

Mailing Address: _____

(If different from domicile)

Citizen of: _____

Name: _____

Domicile or Principal

Office: _____

(Street and Number)

(City, Village or Town)

(State)

(Zip Code)

Mailing Address: _____

(If different from domicile)

Citizen of: _____

Interest (s) of Petitioner (s): [Check one] Executor (s) named in decedent's Will
 Other (Specify)

1.(b) The proposed Executor is is not an attorney.
[NOTE: A sole Executor-Attorney must comply with 22 NYCRR 207.16(e)]

1.(c) The proposed Executor is is not the attorney-draftsperson, a then-affiliated attorney or employee thereof.
[NOTE: An attorney-draftsperson, a then-affiliated attorney or employee thereof must comply with SCPA 2307-a]

2. The name, domicile, date and place of death, and national citizenship of the above-named decedent as follows:

- (a) Name: _____
- (b) Date of death _____
- (c) Place of death _____
- (d) Domicile: Street _____
City, Town, Village _____
County _____ State _____
- (e) Citizen of: _____

3. The Last Will, herewith presented, relates to both real and personal property and consists of an instrument or instruments dated as shown below and signed at the end thereof by the decedent and the following attesting witnesses:

_____	_____
(Date of Will)	(Names of All Witnesses to Will)
_____	_____
(Date of Codicil)	(Names of All Witnesses to Codicil)
_____	_____
(Date of Codicil)	(Names of All Witnesses to Codicil)

4. No other will or codicil of the decedent is on file in this Surrogate's Court, and upon information and belief, after a diligent search and inquiry, including a search of any safe deposit box, there exists no will, codicil or other testamentary instrument of the decedent later in date to any of the instruments mentioned in Paragraph 3 except as follows:
[Enter "NONE" or specify]

5. The decedent was survived by distributees classified as follows: [Information is required only as to those classes of surviving relatives who would take the property of decedent pursuant to EPTL 4-1.1 and 4-1.2. State the **number** of survivors in each class. Insert “**NO**” in all prior classes. Insert “**X**” in all subsequent classes].

a. _____ [] Spouse (husband/wife).

b. _____ [] Child or children and/or issue of predeceased child or children.
[Must include marital, nonmarital, adopted, or adopted-out of child under DRL Section 117]

c. _____ [] Mother/Father.

d. _____ [] Sisters and/or brothers, either of the whole or half blood, and issue of predeceased sisters and/or brothers (nieces/nephews, etc.)

e. _____ [] Grandparents. [Include maternal and paternal]

f. _____ [] Aunts and/or uncles, and children of predeceased aunts and/or uncles (first cousins). [Include maternal and paternal]

g. _____ [] First cousins once removed (children of predeceased first cousins). [Include maternal and paternal]

6. The names, relationships, domicile and addresses of all distributees (under EPTL 4-1.1 and 4-1.2), of each person designated in the Will herewith presented as primary executor, of all persons adversely affected by the purported exercise by such Will of any power of appointment, of all persons adversely affected by any codicil and of all persons having an interest under any other will of the decedent on file in the Surrogate’s Court, are hereinafter set forth in subdivisions (a) and (b).

[If the propounded will purports to revoke or modify an inter vivos trust or any other testamentary substitute, list the names, relationships, domicile and addresses of the trustee and beneficiaries affected by the will in subparagraphs (a) and (b) below. **Submit trust agreement]**

(a) All persons and parties so interested who are of **full age and sound mind** or which are corporations or associations, are as follows:

Name and Relationship	Domicile Address and Mailing Address	Description of Legacy, Devise or Other Interest, or Nature of Fiduciary Status

(b) All persons so interested who are **persons under disability**, are as follows:
[Furnish all information specified in NOTE following 7b]

Name and Relationship	Domicile Address and Mailing Address	Description of Legacy, Devise or Other Interest, or Nature of Fiduciary Status

7. (a) The names and domiciliary of all substitute or successor executors and of all trustees, guardians, legatees, devisees, and other beneficiaries named in the Will and/or trustees and beneficiaries of any inter vivos trust designated in the propounded Will other than those named in Paragraph 6 herewith are as follows:

Name and Relationship	Domicile Address and Mailing Address	Description of Legacy, Devise or Other Interest, or Nature of Fiduciary Status

(b) All such legatees, devisees and other beneficiaries who are persons under disability are as follows: [Furnish all information specified in NOTE below]

Name and Relationship	Domicile Address and Mailing Address	Description of Legacy, Devise or Other Interest, or Nature of Fiduciary Status

[NOTE: In the case of each infant, state (a) name, birth date, relationship to decedent, domicile and residence address, and the person with whom he/she resides, (b) whether or not he/she has a court-appointed guardian (if not, so state), and whether or not his/her father and/or mother is living, and (c) the name and residence address of any court-appointed guardian and the information regarding such appointment. In the case of each other person under a disability, state (a) name, relationship to decedent, and residence address, (b) facts regarding his disability including whether or not a committee, conservator, guardian, or any other fiduciary has been appointed and whether or not he/she has been committed to any institution, and (c) the names and addresses of any committee, person or institution having care and custody of him/her, conservator, guardian, and any relative or friend having an interest in his/her welfare. In the case of a person confined as a prisoner, state place of incarceration and list any person having an interest in his/her welfare. In the case of unknowns, describe such person in the same language as will be used in the process.]

8. (a) No beneficiary under the propounded will, listed in Paragraph 6 or 7 above, had a confidential relationship to the decedent, such as attorney, accountant, doctor, or clergyman, except: **[Enter "NONE" or indicate the nature of the confidential relationship].**

(b) No persons, corporations or associations are interested in this proceeding other than those mentioned above.

9. (a) To the best of the knowledge of the undersigned, the approximate total value of all property constituting the decedent's gross testamentary estate is greater than \$_____ but less than \$_____.

Personal Property \$_____ Improved real property in New York State \$_____ Unimproved real property in New York State \$_____

Estimated gross rents for a period of 18 months \$_____

(b) No other testamentary assets exist in New York State, nor does any cause of action exist on behalf of the estate, except as follows: **[Enter "NONE" or specify]**

10. Upon information and belief, no other petition for the probate of any will of the decedent or for letters of administration of the decedent's estate has heretofore been filed in any court.

WHEREFORE your petitioner (s) pray (s) that process be issued to all necessary parties to show cause why the Will and the Codicil (s) set forth in Paragraph 3 and presented herewith should not be admitted to probate; (b) that an order be granted directing the service of process, pursuant to the provisions of Article 3 of the S.C.P.A., upon the persons named in Paragraph (6) hereof whose names or whereabouts are unknown and cannot be ascertained, or who may be

persons on whom service by personal delivery cannot be made; and (c) that such Will and Codicil (s) be admitted to probate as a Will of real and personal property and that letters issue thereon as follows: [Check and complete all relief requested.]

[] Letters Testamentary to _____

[] Letters of Trusteeship to _____ f/b/o _____

_____ f/b/o _____

_____ f/b/o _____

[] Letters of Administration c.t.a. to _____

_____ and that petitioner (s) have such other relief as may be proper.

Dated: _____

1. _____
(Signature of Petitioner)

2. _____
(Signature of Petitioner)

(Print Name)

(Print Name)

3. _____
(Name of Corporate Petitioner)

(Signature of Officer)

(Print Name and Title of Officer)

COMBINED VERIFICATION, OATH AND DESIGNATION

[For use when petitioner is an individual]

STATE OF NEW YORK)
COUNTY OF _____) ss.:

The undersigned, the petitioner named in the foregoing petition, being duly sworn, says:

1. VERIFICATION: I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

2. OATH OF [] EXECUTOR [] ADMINISTRATOR c.t.a.
[] TRUSTEE as indicated above: I am over eighteen (18) years of age and a citizen of the United States and I will well, faithfully and honestly discharge the duties of Fiduciary of the goods, chattels and credits of said decedent according to law. I am not ineligible to receive letters and will duly account for all moneys and other property that will come into my hands.

3. DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I hereby designate the Clerk of the Surrogate's Court of _____ County, and his/her successor in office, as a person on whom service of any process, issuing from such Court may be made in like manner and with like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York after due diligence used.

My domicile is: _____
(Street Address) (City/Town/Village)

(State) (Zip)

(Signature of Petitioner)

(Print Name)

On _____, 20_____, before me personally came _____ to me known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he/she executed the same.

Notary Public
Commission Expires:
(Affix Notary Stamp or Seal)
Signature of Attorney: _____

Print Name: _____

Firm Name: _____ Tel No. : _____

Address of Attorney: _____

COMBINED CORPORATE VERIFICATION, CONSENT AND DESIGNATION

[For use when a petitioner to be appointed is a bank or trust company]

STATE OF NEW YORK)
COUNTY OF _____) ss.:

I, the undersigned, a _____ of
(Title)

(Name of Bank or Trust Company)

a corporation duly qualified to act in a fiduciary capacity without further security, being duly sworn says:

1. VERIFICATION: I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

2. CONSENT: I consent to accept the appointment as Executor
Administrator c.t.a
 Trustee under the Last Will and Testament of the decedent described in the foregoing
petition and consent to act as such fiduciary.

3. DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I designate the
Chief Clerk of the Surrogate's Court of _____ County, and his/her
successor in office, as a person on whom service of any process issuing from such Surrogate's
Court may be made, in like manner and whenever one of its proper officers cannot be found and
served within the State of New York after due diligence used.

(Name of Bank or Trust Company)

BY _____
(Signature)

(Print Name and Title)

On _____, 20 _____, before me personally came
_____, to me known, who duly swore to the foregoing instrument
and who did say that he/she resides at _____ and that he/she is a
_____ of
_____ the corporation/national banking association
described in and which executed such instrument, and that he/she signed his/her name thereto
by order of the Board of Directors of the corporation.

Notary Public
Commission Expires:
(Affix Notary Stamp or Seal)

Signature of Attorney: _____

Print Name: _____

Firm Name: _____ Tel No. : _____

Address of Attorney: _____

STATE OF NEW YORK
SURROGATE'S COURT: COUNTY OF _____ X

PROBATE PROCEEDING,
WILL OF _____

a/k/a _____

Deceased. _____ X

(Note: Attach a copy of the Will/Codicil to this Affidavit of Comparison executed by any two persons; if a photocopy of the Will is used, only one person Need make the affidavit.)

AFFIDAVIT OF COMPARISON
File No. _____

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

I/We _____(and)_____ being duly sworn, say(s),
that (he/she has) (we have) carefully compared the copy of decedent's Will/Codicil propounded
herein to which this affidavit is annexed with the original Will dated the _____ day of
_____, (and the original Codicil dated the ____ day of _____, _____), about to be
filed for probate, and that the same is in all respects a true and correct copy of said original
Will/Codicil and of the whole thereof.

Sworn to before me this _____
day of _____, 20____

Signature

Notary Public
Commission Expires:
(Affix Notary Stamp or Seal)

Print Name

Name of Attorney: _____ Tel. No: _____

Address of Attorney: _____

SURROGATE'S COURT OF THE STATE OF
NEW YORK, COUNTY OF

-----X
PROBATE PROCEEDING, WILL OF

**ATTORNEY'S CERTIFICATION
IN PROBATE PROCEEDING**

a/k/a

Deceased.

File No.:

-----X

The undersigned attorney hereby certifies pursuant to Section 207.4(b) of the Uniform Rules for Surrogate's Court that the foregoing forms and all supporting documents prepared on New York State Bar Association Official OCA Forms are the same as the official forms described in said Section and that the substantive text has not been altered.

Signature of Attorney

Print Name of Attorney

Firm

Tel. No.

Address

STATE OF NEW YORK
SURROGATE'S COURT: COUNTY OF _____
_____ X

PROBATE PROCEEDING,
WILL OF _____

NOTICE OF PROBATE
SCPA 1409

a/k/a _____

File No. _____

Deceased.
_____ X

Notice is hereby given that:

1. The Will dated _____ (and Codicil dated _____) (and
Codicil dated _____) of the above named decedent, domiciled at
_____ County of _____, New York, has been/will be offered for
probate in the Surrogate's Court for the County of _____.

2. The name (s) of proponent (s) of said Will is/are _____
whose address(es) is/are _____

3. The name and post office address of each person named or referred to in the petition who has not been served or has not appeared, or waived service of process, with a statement whether such person is named or referred to in the will as legatee, devisee, trustee, guardian or substitute or successor executor, trustee or guardian, and as to any such person who is an infant or an incompetent, the name and post office address of a person upon whom service of process may be made on behalf of such infant or incompetent, is as follows:

NAME	MAILING ADDRESS	NATURE OF INTEREST OR STATUS
_____	_____	_____
_____	_____	_____
_____	_____	_____

(USE ADDITIONAL SHEETS IF NECESSARY)

Date _____, 20 _____

[Note: Complete Affidavit of Mailing. If serving infant 14 years of age or older, list and mail to infant as well as parent or guardian.]

Name of Attorney: _____ Tel. No: _____

Address of Attorney: _____

AFFIDAVIT OF MAILING NOTICE OF PROBATE

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

_____, residing at _____
_____ being duly sworn, says that he/she
is over the age of 18 years, that on the _____ day of
_____, 20____, he/she deposited in the post office box regularly
maintained by the government of the United States in the _____ of
_____, State of New York, a copy of the foregoing Notice of
Probate contained in a securely closed postpaid wrapper directed to each of the persons
named in said notice at the places set opposite their respective names.

Sworn to before me this _____
day of _____, 20____

Signature

Notary Public
Commission Expires:
(Affix Notary Stamp or Seal)

Print Name

Name of Attorney: _____ Tel. No: _____

Address of Attorney: _____

AT A SURROGATE'S COURT held in and
for the County of _____, at the
Surrogate's County Court House on the ____
day of _____ in the year 20__

Present:

HONORABLE

, *Surrogate*

X

PROBATE PROCEEDING, WILL OF

Decree Granting Probate

a/k/a

FILE NO.: _____

Deceased.

X

SATISFACTORY PROOF having been made that jurisdiction has been
obtained of all necessary parties and that all necessary notice has been given; AND the
witnesses _____ to said last Will bearing date
_____, having been sworn and examined, their examination having been
reduced to writing and filed, or their affidavits having been filed, and it appearing by
such proof that said Will was duly executed, and that the Testator at the time of executing
it was in all respects competent to make a Will, and not under restraint, and the Court
being satisfied of the genuineness of the said will of _____ and the validity of its
execution;

IT IS ORDERED, ADJUDGED AND DECREED, that the instrument offered
for probate herein be, and the same hereby is, admitted to probate as the Will of said ____
_____ deceased, valid to pass real and personal property, and that
the said Will and this decree be recorded, and that letters testamentary be issued to the
executrix and _____ who may qualify thereunder.

Surrogate.

EXHIBIT B

STATE OF NEW YORK
SURROGATE'S COURT: COUNTY OF _____ X

PROBATE PROCEEDING,
WILL OF _____
a/k/a _____

WAIVER OF PROCESS:
CONSENT TO PROBATE

File No. _____

Deceased.
X

To the Surrogate's Court, County of _____

The undersigned, being of full age and sound mind, residing at the address written below and interested in this proceeding as set forth in paragraph 6a of the petition, hereby waives the issuance and service of citation, in this matter and consents that the court admit to probate the decedent's Last Will and Testament dated _____, 20_____
(and codicils, if any, dated _____), a copy of each of which testamentary instrument had been received by me, and that

Letters Testamentary issue to

Letters if Trusteeship issue to

of the following trusts:

Date	Signature	Street Address	Relationship
	Print Name	Town/State/Zip	

STATE OF NEW YORK
COUNTY OF _____ ss.:

On _____, 20 _____, before me personally
appeared _____ to me
known and known to me to be the person described in and who executed the foregoing waiver
and consent and duly acknowledged the execution thereof.

Notary Public
Commission Expires:
(Affix Notary Stamp or Seal)

Signature of Attorney: _____

Print Name: _____

Firm Name: _____ Tel No. : _____

Address of Attorney: _____

EXHIBIT C

SURROGATE'S COURT STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
Probate Proceeding,

Affidavit of Heirship

a/k/a

File No.:

Deceased.

-----X
STATE OF NEW YORK }
 } ss.:
COUNTY OF }

_____, being duly sworn, deposes and says:

1. I knew _____, the decedent, for over _____ years. I am her _____ and am not a beneficiary or distributee. I have and will not received any compensation for completing this affidavit.

2. _____ was married only once during her lifetime to _____ who died on _____.

3. _____ had only one natural child, _____, and no adopted children.

Sworn to before me this
_____ day of _____, 20_____.

Notary Public

EXHIBIT D

STATE OF NEW YORK
SURROGATE'S COURT: COUNTY OF _____

PROBATE PROCEEDING, X
WILL OF _____
a/k/a _____

Deceased. X

AFFIDAVIT OF ATTESTING
WITNESS (After Death)
Pursuant to SCPA 1406

File No. _____

STATE OF NEW YORK)
COUNTY OF _____) ss.:

The undersigned witness, being duly sworn, deposes and says:

- (1) I have been shown [check one]
() the original instrument dated _____,
() a court-certified photographic reproduction of the original instrument dated _____, purporting to be the last Will and Testament/Codicil of the above-named decedent.
- (2) On the date indicated in such instrument (under the supervision of an attorney), I saw the decedent subscribe the same at the place where decedent's signature appears, and I heard the decedent declare such instrument to be his/her last Will and Testament/Codicil.
- (3) I thereafter signed my name to such instrument as a witness thereto at the request of the decedent, and I saw the other witness (es) _____ sign his/her/their names (s) at the end of such instrument as a witness thereto.
- (4) At the time the decedent subscribed and executed such instrument, the decedent was to the best of my knowledge and belief upwards of 18 years of age, and in all respects appeared to be of sound and disposing mind, memory and understanding, competent to make a will, and not under any restraint.
- (5) The decedent could read, write and converse in the English language, and was not suffering from defects of sight, hearing or speech, or any other physical or mental impairment, which would affect his/her capacity to make a valid will. The purported instrument was the only copy of said Will/Codicil executed on that occasion, and was not executed in counterparts.

(6) I am making this affidavit at the request of _____.

(Witness Signature)

(Print Name)

(Street Address)

(Town/State/Zip)

Sworn before me this _____
day of _____, 20_____

Notary Public
Commission Expires:
(Affix Notary Stamp or Seal)

**[Note: Each witness must be shown either the Original Will or a Court-Certified
Reproduction thereof. The Notary Public subscribing to this affidavit may Not be a party
or witness to the Will.]**

EXHIBIT E

I, JOHN DOE, have designated an attorney, _____, as my Executor in my Will dated _____, 20__.

Prior to signing my Will I was informed that:

(i) subject to limited statutory exceptions, any person, including an attorney, is eligible to serve as my executor.

(ii) absent an agreement to the contrary, any person, including an attorney, who serves as an executor for me is entitled to receive statutory commissions for executorial services rendered to my estate.

(iii) if such attorney serves as my executor and she or another attorney affiliated with such attorney renders legal services in connection with the executor's official duties, she is entitled to receive just and reasonable compensation for those legal services, in addition to the commissions to which an executor is entitled.

(iv) absent execution of this disclosure acknowledgment, an attorney who serves as an executor shall be entitled to one-half (1/2) commissions she would otherwise be entitled to receive.

(Witness)

JOHN DOE

Dated: _____, 20__

EXHIBIT F

SURROGATE'S COURT OF THE STATE OF NEW YORK

COUNTY OF WESTCHESTER

PROBATE PROCEEDING, Estate of

JOHN DOE,

Deceased.

RENUNCIATION AND
DISCLAIMER OF
INTEREST IN ESTATE

File No. _____

I, MARY SMITH, residing at 123 Main Street, West Harrison, New York 10604, do hereby irrevocably renounce, disclaim and refuse to accept the bequest that would otherwise be payable to me due to the death of JOHN DOE on _____ under Paragraph THIRD (I) of the Will of JOHN DOE dated _____ and admitted to probate on _____ (the "Will").

This renunciation and disclaimer is made with the understanding and expectation that it is irrevocable and will be treated as a qualified disclaimer under §2518 of the U.S. Internal Revenue Code and an effective renunciation under §2-1.11 of the New York Estates, Powers and Trusts Law so that all such property that is includable in the decedent's gross estate for estate tax purposes and that would otherwise be payable to me shall be distributed in accordance with the terms of the Will as if I had predeceased JOHN DOE, the decedent herein.

I hereby execute and acknowledge this renunciation and disclaimer in the presence of a notary public and direct that it be filed in the Surrogate's Court of New

York, New York, which has jurisdiction of the estate of JOHN DOE, within nine (9) months of his death.

The remaining beneficiaries under the Will, JANE DOE and BOB SMITH (collectively, the "Beneficiaries"), will personally gain an interest by reason of this renunciation and disclaimer, as these renounced and disclaimed interests will become available assets to be distributed under the Will. I hereby direct that a copy of this renunciation and disclaimer be served upon each of the Beneficiaries as persons who will gain an interest by reason of this renunciation and disclaimer and upon JANE DOE as the Executor of the Estate of JOHN DOE. I hereby further direct that such service shall be made within nine (9) months after the death of the decedent.

_____, 20__

MARY SMITH

STATE OF NEW YORK)
) SS:
COUNTY OF WESTCHESTER)

On the _____ day of _____, 20__ before me, the undersigned, personally appeared MARY SMITH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the attached Renunciation and Disclaimer of Interests in Estate and acknowledged to me that she executed the same and that by her signature on the instrument she executed the instrument.

Notary Public

EXHIBIT H

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

PROBATE PROCEEDING,

Will of

JOHN DOE,

Deceased.

NOTICE OF
RENUNCIATION

File No. _____

-----X

TO:

NAME

ADDRESS

Jane Doe

456 North Street
Ossining, New York 10562

Bob Smith

123 Main Street
West Harrison, New York 10604

PLEASE TAKE NOTICE, that by the annexed Renunciation and Disclaimer of Interest in Estate signed and acknowledged on _____, 20____, MARY SMITH, pursuant to EPTL §2-1.11, irrevocably renounced the bequest that would otherwise be payable to her due to the death of JOHN DOE on _____ under Paragraph THIRD (I) of the Will of JOHN DOE dated _____ and admitted to probate on _____.

Dated: _____, 20____

Cuddy & Feder LLP
445 Hamilton Avenue
14th Floor
White Plains, New York 10601
(914) 761-1300

EXHIBIT I

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

In the Matter of the Application for
Permission to File Renunciation by the
estate of

JOHN DOE,

Deceased.

PETITION FOR PERMISSION TO
FILE RENUNCIATION
EPTL §2-1.11

File No. _____

To the Surrogate's Court of the County of Westchester:

It is respectfully alleged that:

1. The name, citizenship and domicile of the petitioner are as follows:

Name: Jane Doe

Domicile: 456 North Street, Ossining, New York 10562

Citizen of: United States

2. a. Pursuant to ITEM II of the Will of Jill Smith dated _____, the Decedent, John Doe (the "Decedent"), inherited one-half (1/2) of the estate of his mother, Jill Smith, a domiciliary of 123 Main Street, Shohola, Pennsylvania, due to her death on _____ (copy of Will attached as Exhibit A; copy of Death Certificate attached as Exhibit B). The petitioner inherited the remaining one-half (1/2) interest.

b. Letters of Admr. Pendente Lite were issued to Jane Doe by the Register for the Probate of Wills and Granting Letters of Administration in and for Pike County, Commonwealth of Pennsylvania, on _____ (copy attached as Exhibit C).

3. No distributions from the Estate of Jill Smith have been made to the Decedent since the death of Jill Smith.

4. The petitioner is the executor and the sole beneficiary under Article FOURTH of the Will of John Doe dated _____ and admitted to probate on _____ (the "Will") (copy attached as Exhibit D).

5. Pursuant to the Internal Revenue Code of 1986, as amended, section 2518(b)

the term "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property but only if --

(1) such refusal is in writing,

(2) such writing is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is 9 months after . . .

(A) the date on which the transfer creating the interest in such person is made.

Therefore, the qualified disclaimer of the Decedent's interest in the Estate of Jill Smith must be filed by _____, the date which is nine (9) months after Jill Smith's date of death.

6. Pennsylvania Probate, Estates and Fiduciaries Code §6202 provides that

A disclaimer on behalf of a decedent . . . may be made by his personal representative . . . if . . . the court having jurisdiction of the estate authorizes the disclaimer after finding that it is advisable and will not materially prejudice the rights of creditors, heirs or beneficiaries of the decedent . . .

7. Pennsylvania Probate, Estates and Fiduciaries Code §6204(a) provides that "the disclaimer shall be filed with the clerk of the orphans' court division of the county where the decedent died domiciled . . . a copy of the disclaimer shall be delivered to any personal representative . . . in possession of the property."

8. The petitioner requests authorization from this Court to file the attached Renunciation and Disclaimer on behalf of the Decedent with regard to the estate of his mother, Jill Smith, in Orphans' Court of the Commonwealth of Pennsylvania, Pike County, as such disclaimer will not materially prejudice the rights of creditors, heirs or beneficiaries of the Decedent (copy of Renunciation and Disclaimer attached as Exhibit E).

WHEREFORE your petitioner prays that the Court grant authorization to file the disclaimer on behalf of the Decedent, in Orphans' Court of the Commonwealth of Pennsylvania, Pike County.

Dated: _____, 20____

Signature of Petitioner:

Name: Jane Doe

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

JANE DOE, being duly sworn deposes and says that I am the petitioner above named. I have read the foregoing petition and the same is true of my own knowledge except as to matters therein stated to be alleged upon information and belief and as to those matters I believe them to be true.

JANE DOE

On _____, 20__, before me, the undersigned, personally appeared MARY SMITH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Sworn to by me this
_____ day of _____, 20____

Notary Public
Commission Expires:
(Affix Notary Stamp or Seal)

Signature of Attorney: _____

Print Name: Leslie Levin, Esq.

Firm Name: Cuddy & Feder LLP

Address of Attorney: 445 Hamilton Avenue, 14th Floor, White Plains, New York 10601

EXHIBIT J

STATE OF NEW YORK

Filing Fee Paid \$ _____

SURROGATE'S COURT: COUNTY OF _____ X

_____ Certs \$ _____

_____ Certs \$ _____

ANCILLARY PROBATE PROCEEDING,
WILL OF _____

\$ _____ Bond, Fee: \$ _____

Receipt No: _____ No: _____

a/k/a _____
a domiciliary of the State of _____

**PETITION FOR ANCILLARY PROBATE
SCPA ARTICLE 16**

Ancillary Letters Testamentary

Ancillary Letters of Administration

Without Ancillary Letters

Deceased.

X

File No. _____

TO THE SURROGATE'S COURT, COUNTY OF _____

It is respectfully alleged:

1. The name, citizenship, domicile (or, in the case of a bank or trust company, its principle office) and interest in this proceeding of the petitioner(s) are as follows:

Name: _____

Domicile or Principal Office: _____
(Street and Number)

(City, Village or Town) (State) (Zip Code)

Mailing
address: _____

(If different from domicile)

Citizen of: _____

Name: _____

Domicile or Principal Office: _____
(Street and Number)

(City, Village or Town) (State) (Zip Code)

Mailing
address: _____

(If different from domicile)

Citizen of: _____

Interest (s) of Petitioner (s): [Check one]

- Executor(s) named in decedent's will Creditor
 Other (Specify)_____

2. The name, domicile, date and place of death, and national citizenship of the above-named decedent are as follows:

- (a) Name: _____
(b) Date of Death: _____
(c) Place of Death: _____
(d) Domicile: Street _____
City, Town, Village _____
County _____ State _____
(e) Citizen of: _____

3. Decedent left a will in writing dated _____
(and codicil dated _____), which was duly admitted to probate on by the _____ Court, County of _____, State of _____ being a competent court of the state of the domicile of decedent having jurisdiction thereof, and the will/codicil is not subject to contest under the laws of that state.

On _____, letters were issued by the court to _____, and the amount of the security given on the original appointment was \$_____. Under the will/codicil a bond is is not dispensed with.

[If additional space is needed in Paragraphs 4, 5 and 6, attach addendum.]

4. (a) The will/codicil upon ancillary probate may operate upon property in the State of New York consisting of real property and personal property described and valued as follows: [list items and describe briefly, giving location. If space is insufficient, attached addendum].

Personal Property	\$ _____
Improved real property in New York State	\$ _____
Unimproved real property in New York State	\$ _____
Estimated gross rents for a period of 18 months	\$ _____
Total	\$ _____

4. (b) No other testamentary assets exist in New York State, nor does any cause of action exist on behalf of the estate, except as follows: [Enter "NONE" or specify]

Exemplified copies of the will/codicil, the decree admitting the will/codicil to probate, and the letters issued, if any are submitted as part of this petition.

5. The names, addresses and interests of all persons entitled to process [(a) New York State Department of Taxation and Finance, (b) all domiciliary creditors or domiciliaries claiming to be creditors, and (c) such other persons entitled to letters pursuant to SCPA §1604] are as follows:

Name	Address	Nature of Interest Or Amount of Claim
New York State Department of Taxation and Finance	Albany, New York	
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. The name and address of each domiciliary beneficiary under the will/codicil having an interest in the property in this state is as follows:

(a) Each beneficiary who is of full age and sound mind or which is a corporation or association:

Name	Address	Interest [Refer to Paragraph of Will]
_____	_____	_____
_____	_____	_____
_____	_____	_____

(b) Each beneficiary who is an infant or otherwise under a disability: [State disability and see SCPA §304(3)]

Name	Address	Interest [Refer to Paragraph of Will]
_____	_____	_____
Disability: _____	_____	_____
_____	_____	_____
Disability: _____	_____	_____

7. There are no persons interested in this proceeding other than those herein before mentioned. No previous application for ancillary probate with or without ancillary letters has been made, except _____

WHEREFORE, petitioner(s) pray(s) (a) that process issue to all necessary parties (b) that the Will/Codicil be admitted to ancillary probate and (c) that ancillary letters issue thereon as follows:

- Ancillary Letters Testamentary to: _____
 - Ancillary Letters of administration c.t.a. to: _____
 - No Ancillary Letters to be issued
- (d) [State any other relief requested] _____

Dated: _____

1. _____
(Signature of Petitioner)

(Print Name)

2. _____
(Signature of Petitioner)

(Print Name)

3. _____
(Name of Corporate Petitioner)

(Signature of Officer)

(Print Name and Title of Officer)

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X
ANCILLARY PROBATE PROCEEDING, WILL OF

COMBINED
VERIFICATION
OATH AND
DESIGNATION

a/k/a _____

File No. _____

a domiciliary of the State of _____

Deceased

-----X
STATE OF _____)
COUNTY OF _____) ss:

The undersigned, the petitioner named in the foregoing petition, being duly sworn, says:

1. VERIFICATION: I have read the forgoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

2. OATH OF ANCILLARY [] Executor [] Administrator c.t.a.: I am over eighteen (18) years of age and a citizen of the United States; I will well, faithfully and honestly discharge the duties of ancillary executor/administrator c.t.a. under the will. I am not ineligible to receive letters.

3. DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I do hereby designate the clerk of the Surrogate's Court of _____ County, and his or her successor in office as a person on whom service of any process issuing from such Surrogate's Court may be made, in like manner and with like effect as if it were served personally upon me, whenever I cannot be found within the State of New York after due diligence used.

My _____ domicile
is _____
(Street Address) (City/Town/Village) (State) (Zip Code)

(Signature Of Petitioner)

(Print Name)

On _____, 20_____, before me personally came
_____ to me known to be the person described in and who executed
the foregoing instrument. Such person duly swore to such instrument before me and duly
acknowledged that he/she executed the same.

Notary Public

Commission Expires:

(Affix Notary Stamp or Seal)

Signature of Attorney:_____

Print Name:_____

Firm Name:_____ Tel No. :_____

Address of Attorney:_____

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X
ANCILLARY PROBATE PROCEEDING, WILL OF

a/k/a _____

a domiciliary of the State of _____

COMBINED
CORPORATE
VERIFICATION
CONSENT AND
DESIGNATION
File No. _____

Deceased.

-----X
STATE OF _____)
COUNTY OF _____) ss:

The _____ undersigned, a _____ of
(Title) _____
(Name of Bank or Trust Company)

a corporation duly qualified to act in a fiduciary capacity without further security, being
duly sworn, says:

1. VERIFICATION: I have read the forgoing petition subscribed by me and know the
contents thereof, and the same is true of my own knowledge, except as to the matters
therein stated to be alleged upon information and belief, and as to those matters I believe
it to be true.

2. CONSENT: I consent to accept the appointment as [] Ancillary Executor []
Ancillary Administrator c.t.a. under the will of the decedent described in the forgoing
petition and consent to act as fiduciary.

3. DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I do hereby designate
the clerk of the Surrogate's Court of _____ County, and
his or her successor in office as a person on whom service of any process issuing from
such Surrogate's Court may be made, in like manner and with like effect as if it were
served personally upon me, whenever I cannot be found within the State of New York
after due diligence used.

(Name of Corporate Petitioner)

(Signature of Officer)

(Print Name and Title of Officer)

On _____, 20 _____, before me personally came
_____, to me known, who duly swore to the foregoing instrument
and who did say that he/she resides at _____ and that he/she is a
_____ of
_____ the corporation/national banking association
described in and which executed such instrument, and that he/she signed his/her name thereto
by order of the Board of Directors of the corporation.

Notary Public
Commission Expires:
(Affix Notary Stamp or Seal)

Signature of Attorney: _____

Print Name: _____

Firm Name: _____ Tel No. : _____

Address of Attorney: _____

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X
ANCILLARY PROBATE PROCEEDING, WILL OF

NOTICE OF
ANCILLARY
PROBATE
File No. _____

a/k/a _____

a domiciliary of the State of _____

Deceased

-----X

Notice is hereby given that:

1. An exemplified copy of the Will dated _____ (and Codicil dated _____) of the above named decedent, domiciled at _____ State of _____ has been offered for ancillary probate in the Surrogate's Court for the County of _____.

2. The name(s) of proponent(s) of said Will/Codicil is/are _____ whose address(es) is/are _____

3. The name and post office address of each and every domiciliary beneficiary of the above named decedent as set forth in Paragraph 6 of the petition is/are as follows:

NAME	MAILING ADDRESS	NATURE OF INTEREST OR STATUS
_____	_____	_____
_____	_____	_____
_____	_____	_____

(USE ADDITIONAL SHEETS IF NECESSARY)

Date _____

[Note: Complete Affidavit of Mailing. If serving infant 14 years of age or older, list and mail to infant as well as parent or guardian.]

Name of Attorney: _____ Tel. No: _____

Address of Attorney: _____

AFFIDAVIT OF MAILING NOTICE OF ANCILLARY PROBATE

STATE OF NEW YORK)
)
COUNTY OF _____) ss.:

_____, residing at _____,
being duly sworn, says that he/she is over the age of 18 years, that on the
_____ day of _____, he/she deposited in the post office or in a
post office box regularly maintained by the government of the United States in the

_____ of _____, State of New York,
a copy of the foregoing Notice of Ancillary Probate contained in a securely closed
postpaid wrapper directed to each of the persons named in said notice at the place set
opposite their respective names.

Sworn to before me this _____
day of _____, 20____

Signature

Notary Public
Commission Expires:
(Affix Notary Stamp or Seal)

Print Name

Name of Attorney: _____ Tel. No: _____

Address of Attorney: _____

EXHIBIT K

SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

PROCEEDING FOR

Estate of

a/k/a

Deceased.

NOTICE OF
APPLICATION FOR
LETTERS OF
ADMINISTRATION
(SCPA 1005)

-----X

FILE NO. _____

Notice is Hereby Given That:

(1) an application for Letters of Administration upon the estate of the above-named decedent, has been made by _____, petitioner, whose post office address is: _____.

(2) each and every name of the intestate decedent known to the undersigned is as indicated in the above caption.

(3) petitioner prays that a decree be made directing the issuance of Letters of Administration to

(4) the name and post office address of each and every distributee of the above-named decedent, as set forth in the petition and known to the undersigned, are as follows:

(a) Distributees who have been duly cited, have waived citation or have appeared in this proceeding:

Name of Distributee

Domicile and Post Office Address

(b) Other Distributees;

Name of Distributee

Domicile and Post Office Address

[CONTINUE ON REVERSE SIDE IF MORE SPACE NEEDED]

(5) That the undersigned does not know of any other distributees of the said decedent.

(6) That Letters of Administration will issue on or after _____, 20 ____

Dated: _____, 20

Signature of Petitioner or Attorney

Attorney for Petitioner

Print Name

Address (Office)

Address

Tel No. _____

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X
PROCEEDING FOR
Estate of
a/k/a

Deceased.

AFFIDAVIT OF
MAILING
NOTICE OF
APPLICATION FOR
LETTERS OF
ADMINISTRATION
(SCPA 1005)
FILE NO. _____

STATE OF NEW YORK
COUNTY OF _____ ss.:

_____, residing at _____, New York, being duly sworn, deposes and says that deponent is over the age of eighteen years; that on _____, 20____, deponent mailed a copy of the foregoing Notice of application for Letters of administration, contained in a securely closed postpaid wrapper, directed to each of the persons named in paragraph 4(b), respectively, as follows:

Whose post office address is _____

Whose post office address is _____

Whose post office address is _____

Whose post office address is _____

by depositing the document in a letter box or other official depository under the exclusive care and custody of the United States Post Office, located at:

Sworn to before me this
day of _____, 20 _____

Signature

Notary Public
Commission Expires:
(Affix Stamp or Seal)

EXHIBIT L

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF _____X

PROCEEDING FOR
Estate of

a/k/a

Deceased.

WAIVER OF
CITATION,
RENUNCIATION
AND CONSENT TO
APPOINTMENT OF
ADMINISTRATOR
(INDIVIDUAL)

FILE NO. _____X

The undersigned, a distributee or creditor of the above named decedent and being of full age and sound mind hereby voluntarily appears in the Surrogate's Court of _____ County, New York and waives the issuance and service of citation in this matter, renounces all right to Letters of Administration of the above captioned estate and consents that

- Letters of Administration
- Letters of Administration with Limitations
- Limited Letters of Administration

be issued to _____

or any other person or persons entitled thereto without any notice whatsoever to the undersigned, and consents

that a bond be dispensed with and hereby specifically release any claim I might have under any bond that may be filed

that a bond in the amount of \$ _____ be posted.

Date	Signature	Street Address	Relationship
	Print Name	Town/State/Zip	

STATE OF NEW YORK
COUNTY OF _____ ss.:

On _____, 20____, before me personally appeared _____ to me known and known to me to be the person described in and who executed the foregoing waiver and consent and each duly acknowledged the execution thereof.

Notary Public
Commission Expires:
(Affix Stamp or Seal)

Attorney for Petitioner

Address

Telephone No.

EXHIBIT M

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----x
In the Matter of

ASSETS

Deceased.

-----x
No: _____

TO BE COMPLETED BY FIDUCIARY or ATTORNEY FOR FIDUCIARY

Total Estate Assets (see below)* _____
Filing fee SCPA 2402(7) \$ _____
Filing fee initially paid \$ _____
Balance (Refund) Due \$ _____

INVENTORY OF

(Rule §207.20)

File

The undersigned, a fiduciary or attorney for the fiduciary of the above Decedent's estate, certifies that the following constitutes the gross estate for tax purposes and identifies whether non-estate assets exist. Complete below according to the following value categories:

- Category A - under \$10,000; Category B - \$10,000 to under \$20,000; Category C - \$20,000 to under \$50,000;
Category D - \$50,000 to under \$100,000; Category E - \$100,000 to under \$250,000;
Category F - \$250,000 to under \$500,000; Category G - \$500,000 or over.

Date of Death: _____ Date of Letters: _____ Type of Letters: _____

Name of Fiduciary(ies) and, if changed, fiduciary(ies) address:

ASSETS INDIVIDUALLY OWNED BY DECEDENT OR PAYABLE TO ESTATE

CATEGORY

- | | |
|--|--|
| <u>1. Real Estate</u> | _____ |
| <u>2. Stocks and Bonds</u> | _____ |
| <u>3. Insurance Payable to Estate</u> | _____ |
| <u>4. IRAs, 401 Ks Payable to Estate</u> | _____ |
| <u>5. Mortgages or Notes Held by Decedent</u> | _____ |
| <u>6. Cash</u> | _____ |
| <u>7. Miscellaneous</u> | _____ |
| <u>8. Firearms (Check appropriate box)</u> | <u>Yes – see attached firearms inventory</u> |
| | <u>None</u> |
| <u>*TOTAL ESTATE ASSETS</u> | _____ |

NON-ESTATE ASSETS - CHECK YES OR NO TO EACH OF THE FOLLOWING:

- 9. Living Trust** Yes No
If yes, set forth the Name of the Trustee(s) _____

<u>10.</u>	<u>Gifts in Excess of Federal Annual Exclusion Made Within 3 Years of Decedent's Death</u>	<u>Yes</u>	<u>No</u>
<u>11.</u>	<u>Jointly Held Property (Real or Personal)</u>	<u>Yes</u>	<u>No</u>
<u>12.</u>	<u>Insurance Payable to Beneficiary</u>	<u>Yes</u>	<u>No</u>
<u>13.</u>	<u>IRAs, 401K's Payable to Beneficiary</u>	<u>Yes</u>	<u>No</u>
<u>14.</u>	<u>Annuities</u>	<u>Yes</u>	<u>No</u>
<u>15.</u>	<u>Powers of Appointment</u>	<u>Yes</u>	<u>No</u>
<u>16.</u>	<u>Cause(s) of Action Pending</u>	<u>Yes</u>	<u>No</u>
	<u>If yes, identify Court and Index Number</u>		

Certified to be true on the _____ day of _____, 20____.

Signature

Attorney's Name

Print Name

Attorney's Address

I-1 3/2016

Attorney's Telephone No.

EXHIBIT N

ESTATE ADMINISTRATION CHECKLIST

DATED:

SUBJECT: Estate of:
Date of Death:
Office File No.:
Court Index No.:

Index

<u>Section</u>	<u>Subject</u>	<u>Page</u>
1.	<u>Immediate Actions</u>	2
2.	<u>First 2 Weeks after DOD</u> -	3
3.	<u>First Month After Death</u>	5
4.	<u>First Month After Death</u>	12
5.	<u>Within 3 Months of Death</u>	14
6.	<u>Within 4 Months of Death - Income Taxes (Form 1040)</u>	18
7.	<u>Within 4 Months of Death - Income Taxes (Form 1041)</u>	19
8.	<u>Within 4 Months of Death - Gift Tax (Form 709)</u>	21
9.	<u>Within 4 Months of Death - Generation-Skipping Tax</u>	21
10.	<u>Within 4 Months of Death - Employee Benefits</u>	22
11.	<u>Within 4 Months of Death - Business Interests</u>	23
12.	<u>Within 5 Months of Death - Fiduciary Relations</u>	26
13.	<u>Within 6 Months of Death - New York Inventory</u>	28
14.	<u>Within 7 Months of Death - Flower Bonds - Claims</u>	28
15.	<u>Within 9 Months of Death - Federal, New York Estate Taxes</u>	28
16.	<u>Audit of Form 706</u>	29
17.	<u>Termination of Estate - Final Distribution</u>	29

ESTATE ADMINISTRATION CHECKLIST

1. Immediate Actions To Be Taken Upon Notification of Death:

1.01. Will file should be reviewed for information concerning names, addresses, telephone numbers and Social Security numbers of distributees, legatees and other individuals to whom notice should be given.

1.02. Asset information in Will file should be reviewed and all other files containing related information and prior Wills should be requisitioned from file room and reviewed.

1.03. Review cemetery plot deed, if requested by family.

1.04. If decedent has no close or surviving family, consider funeral arrangements and anatomical bequests.

1.05. Make security arrangements, if appropriate, if decedent's residence will be unoccupied (permanently or during the funeral).

1.06. Assist, if requested, in preparation of accurate death notice in newspapers and death and residence address certificate. Verify marital status, dates and places of birth and death for death certificate.

1.07. Advise interested attorneys, accountants, friends and clergy of death.

1.08. Advise Post Office of death and that mail should be held pending appointment of Executor. See 3.04.(1).

1.09. Advise family members against attempting to enter decedents' safe deposit box.

1.10. Order sufficient certified death certificates (minimum of 20).

1.11. Ascertain that adequate cash funds are immediately available to the surviving family members.

1.12. Make certain that there is adequate liability and loss insurance coverage in force to protect all assets and all persons concerned, including executors.

1.13. If a bank is named as an executor, request immediate assignment of an administration officer.

1.14. Arrange to meet with the immediate family as soon as is convenient for them.

1.15. Consider redrafting the wills of the surviving spouse and other relatives to take account of their survival.

1.16. Advise family members to keep careful records of expenses incurred with the funeral and other immediate arrangements.

2. First 2 Weeks after DOD -
Prepare Probate or Administration Petition

2.01. Obtain custody of the original will and all codicils. SCPA 1401.

2.02. Ascertain the decedent's domicile, if a possible double domicile exists.

2.03. Consider whether any beneficiaries should disclaim interests under will or non-testamentary assets (i.e. life insurance, joint or totten trust accounts, etc) IRC §2518, EPTL 2-1.11.

2.04. Determine the identities and addresses of all of the decedent's heirs. Prepare Affidavit of Heirship, if required by Court Rules.

2.05. Consider whether each nominated executor should, and will, qualify. SCPA 1417.

2.06. Prepare Fact Information Analysis (see 3.01).

2.07. If the decedent had no will, determine who will petition for letters of administration. SCPA 1001.

2.08. Consider advisability of Preliminary Letters Testamentary, which are appropriate if undue delay in obtaining permanent letters is expected and the estate has an immediate need for cash or if assets are subject to great fluctuations in value or if transactions pending at death of decedent have to be completed immediately. SCPA 1412.

2.09. If the decedent had a will, prepare Probate Petition, etc. SCPA 1402.

2.10. If the decedent's original will cannot be produced, determine whether a copy may be admissible to probate. SCPA 1407.

2.11. Determine whether multiple copies of the decedent's will were executed, and if so, account for all of the copies.

2.12. Determine whether all charitable legatees have the legal capacity to receive bequests left to them in the will. IRC §2055.

2.13. Attempt to learn whether there are any alleged illegitimates who may have the status of heirs, distributees or beneficiaries under the will. EPTL 4-1.2.

2.14. Determine whether the decedent's estate qualifies for simplified administration as a small estate. SCPA 1304.

2.15. Evaluate the possibility that the decedent's will may have been revoked by his marriage or divorce after its execution.

2.16. Consider whether the decedent's will may have been revoked by the subsequent birth of a child. EPTL 5-3.2.

2.17. Ascertain whether anyone effectively exerted any influence on the decedent to change or to not change his will. SCPA 1410.

2.18. Secure affidavits from the witnesses to the will as to the circumstances of its execution, SCPA 1406, or arrange for examination of witnesses on the return date of citation, if required. SCPA 1404.

2.19. Review court records to make sure no prior will is on file.

2.20. File Probate Petition, will, etc., in Court.

2.21. Ascertain whether the surviving spouse will elect against the will, and consider need to recommend independent counsel. EPTL 5-1.1A.

2.22. Obtain, and serve, Citation if advisable or necessary. SCPA 1403.

2.23. Determine the validity of any inter vivos trust created by the decedent which attempts to limit or defeat the surviving spouse's statutory rights.

2.24. Determine whether to petition for the appointment of a conservator or committee for the surviving spouse, in order to elect against the will. Mental Hygiene Law - Articles 77 and 78.

2.25. Consider the necessity of instituting ancillary administration proceedings in any other jurisdiction where the decedent left property.

2.26. Determine whether there will be a necessity for a construction proceeding concerning any part of the will. SCPA 1420.

2.27. Prepare summary and analysis of important provisions of the will.

2.28. Ascertain whether the terms of the decedent's will violate the provisions of any binding contractual arrangements.

2.29. Ascertain the status of any person who may have been adopted into or out of the decedent's family, either by legal or equitable adoption. EPTL 2-1.3.

2.30. If any legatees fail to survive the decedent, determine whether their legacies lapsed or passed to someone else. EPTL 3-3.3.

2.31. Determine the effect of any letters from the decedent as to the disposition of personal effects, small cash bequests and charitable gifts to be made by his family members.

2.32. Advise family members of the tax consequences of any arrangement among themselves, varying the terms of the decedent's will.

2.33. Locate, and determine the effectiveness of, any ante-nuptial agreement which was signed by the decedent and his surviving spouse.

3. First Month After Death - Actions to be Taken - General

3.01. Complete Fact Information Analysis and obtain:

3.01.(a) 3 years of Federal and state personal and business income tax returns.

3.01.(b) All Federal and state gift tax returns.

3.01.(c) 3 years of state intangible personal property returns, if applicable (Florida).

3.01.(d) Three years of checkbooks, cancelled checks and bank statements for all bank accounts open at death or closed within 3 years of death.

3.01.(e) 3 years of brokerage and custody statements for all accounts open at death or closed within 3 years of death.

3.01.(f) Contact accountant and broker for decedent to discuss any immediate pending items.

3.01.(g) Paid funeral bill.

3.01.(h) Homeowners and personal property policies in effect at death.

3.01.(i) Names, addresses, ages and Social Security numbers of all interested parties.

3.01.(j) Asset and liability information.

3.02. Order valuations for Federal estate tax purposes. Notify any brokerage account executives by telephone of death and request valuations (high and low valuations required. If death on Saturday or Sunday request Friday and Monday high and low values). Check for flower bonds.

3.03. Apply by mail for Federal Employer Identification Number on Form SS-4 or use pre-assigned Number, if available.

3.04. After letters issued, complete the following.

3.04.(a) After New York State Tax Waiver on safe deposit box obtained, schedule appointment for opening of safe deposit box. Prepare notarized authorization letters from any Executor who is not attending box opening. At box opening bring 1 certificate of Letters Testamentary and 1 death certificate for bank. Ascertain from client location of safe deposit box keys so that if key is unavailable bank can be directed to schedule a break-in.

3.04.(b) Apply for New York State Releases of Lien, if required, for real estate.

3.04.(c) Establish Estate checking account including having Money Market account forms signed and then retained for use until after initial bills paid.

3.04.(d) Pay all bills that have been approved by the family. Obtain paid bills from funeral home, doctors, hospitals, etc., for medical reimbursement processing.

3.04.(e) Make arrangements to re-register and continue insurance on the decedent's automobile. Review exempt property statute EPTL 5-3.1.

3.04.(f) Obtain access to all property held in storage or in custody by others. See 3.04(a).

3.04.(g) Lease safe deposit box for estate assets, if required.

3.04.(h) Obtain and evaluate all claims, debts and funeral expenses, and pay those which are valid.

3.04.(i) Make arrangements to have the executor substituted for the decedent in all pending litigations to which the decedent was a party.

3.04.(j) File IRS Form 56, Notice of Fiduciary Relationship, with Certificate of Letters.

3.04.(k) Notify all of the decedent's creditors and mortgagors of the death and furnish instructions for making future payments.

3.04.(l) Arrange with relatives for disposition of decedent's mail. If decedent lived alone request that Post Office forward mail directly to our office. If surviving family member residing at decedent's residence, consider procedures.

3.04.(m) Apply for Federal Releases of Lien on Form 4422, if required for real estate.

3.05. Process life insurance policies. Copy front page of policy and any ownership or beneficiary designation change form. Request Forms 712 and Transfer of Ownership forms from insurance company and, if possible, return of original policy for retention in our files pending Form 706 audit. See 4.

3.06. Process Major Medical, Blue Cross/Blue Shield and Medicare reimbursement forms.

3.07. If surviving spouse or minor children, suggest procedures for Social Security, including lump-sum death benefit.

3.08. If deceased was veteran, assist in processing of VA Death Benefit application and pension benefits.

3.09. Request Social Security numbers and approximate income tax bracket of beneficiaries for use in preparation of estate income tax plan. Ascertain if any beneficiary has a pressing need for income or a strong wish to defer income. See 7.

3.10. Consider whether accounts should be closed or transferred into the name of the estate. If certificates of deposit check interest rate and maturity to see whether they should be allowed to remain open through maturity, rather than closed and proceeds deposited to estate account.

3.11. Inquire and ascertain details of any pending litigation concerning the decedent.

3.12. Consider disposition of credit cards in name of decedent and whether some or all should be cancelled or transferred into name of surviving family members. See 3.17.

3.13. Discuss with family whether jewelry or other fine arts or valuables should be placed in safekeeping. See 3.16.

3.14. Discuss with family which of decedent's employees, if any, are to be retained and discuss their termination and severance pay (consider estate and income tax ramifications).

3.15. Arrange to preserve all of the decedent's important documents.

3.16. Consider whether to store valuable estate assets in a bonded warehouse or other secure facility.

3.17. Discuss with family cancellation of all of the decedent's credit cards and charge accounts, requesting final statement collection of any life insurance on decedent through credit card, and refund of any credit due. See 3.12.

3.18. Arrange to have post-death checks on decedent's account honored.

3.19. Consider retaining an estate accountant if authorized by the will or if necessary or if the executor is willing to pay for doing so.

3.20. Review all unsatisfied charitable pledges of decedent and consider their enforceability.

- 3.21. Consider opening custody account to hold estate securities.
- 3.22. Arrange for appraisal of all valuable tangible personal property and real property.
- 3.23. Locate all bank accounts, advise of the death, and obtain date of death balance in each.
- 3.24. Locate all brokerage accounts, advise of the death, and obtain inventory of all assets in each account.
- 3.25. Consider terminating open orders for purchase and sale of securities and commodities.
- 3.26. Evaluate cash requirements, and raise needed funds to pay estate taxes, debts, and expenses of administration.
- 3.27. Ascertain whether the decedent owned stock in the corporate executor, and whether there is a necessity to sell that stock in the estate.
- 3.28. Subject to desires of family, consider notifying utility companies (telephone, gas, electric, cable TV, water and others) to render final bills and discontinue service.
- 3.29. Determine whether the circumstances of the decedent's death are such that there may be an action against one or more persons or entities for causing it or contributing to it.
- 3.30. Consider instituting proceedings if they are required to permit payment of any claims which the executor may have against the estate.
- 3.31. Consult with relatives concerning the setting of a headstone on the grave, and arranging for perpetual care.
- 3.32. File all required inventories of estate assets in Court or with State. See 13.05.
- 3.33. Recommend placing the decedent's marketable securities in a custody account with a bank.
- 3.34. Recommend disposing of assets which can cause problems or create liabilities in administering the estate including: worthless assets, guns and ammunition, drugs, contraband, liquor, confidential materials and files from professional practice of decedent.

3.35. Analyze the decedent's last three years' income tax returns to identify his/her sources of income and those to whom he/she paid interest.

3.36. Review the decedent's banking records to learn the sources of his income, as well as his ordinary and extraordinary expenses.

3.37. Attempt to negotiate a settlement of liability on leases (but be aware of potential conversion rights) and contracts to which the decedent was a party, and which survive death.

3.38. Consider whether it is desirable or necessary to publish notice to creditors. SCPA 1801.

3.39. If Florida estate (either resident or non-resident) publish Notice to Creditors.

3.40. Determine whether any gifts made by the decedent before death can be invalidated.

3.41. Conduct a thorough search of the decedent's home and place of business for secreted assets.

3.42. Plan strategy for investment of estate funds during period of administration.

3.43. Surrender, destroy or place in safekeeping the decedent's passport and other governmental identification documents.

3.44. Carefully evaluate all claims for compensation asserted by friends and relatives who rendered services to the decedent.

3.45. Advise the Executor on the benefits of taking commissions during the period of administration, rather than only at the conclusion of the estate. Consider waiver of all or portion of fiduciary commissions. SCPA 2307 (executors) SCPA 2309 (trustees).

3.46. Determine the effect of the decedent's divorce on the disposition of assets made in the will.

3.47. Investigate into the decedent's mental condition at the time of his making any purported gifts, and determine whether to attempt to recover the transferred assets.

3.48. Analyze the will for any possible violation of the rule against perpetuities, and take whatever action may be indicated if a violation is discovered. EPTL Article 9.

3.49. Subject to wishes of family, consider cancelling or transferring magazine subscriptions and other expenses which the decedent prepaid.

3.50. Review the decedent's portfolio of marketable securities and determine what dividends and interest were due to the decedent, and what is due to the estate.

3.51. Attempt to cancel orders for, or return, recently purchased assets which the family cannot use.

3.52. Determine whether bequests of particularly identified assets are general or specific. EPTL 3-5.1.

3.53. Cancel all licenses which decedent held including driver's license, firearms license and professional license.

3.54. Determine the escrow balance to the decedent's credit concerning any mortgage on his home.

3.55. Obtain all amounts to which the surviving spouse is entitled under local law, including allowance, exempt property and similar payments. EPTL 5-3.1.

3.56. Attempt to obtain the consent of all residuary legatees to having one of them act on behalf of all of them.

3.57. Recommend that the executor review all of the decedent's assets to determine which should be sold from an investment point of view.

3.58. Review all of the decedent's real estate holdings to make sure none of them is delinquent or in arrears, an arrange to have all future tax bills sent to the executor or to our office.

3.59. Consider recording all unrecorded deeds and mortgages running to the decedent.

3.60. Ascertain whether decedent had any:

3.60.(a) Outside fiduciary or beneficiary relationships. Consider if decedent could be deemed transferor for generation skipping purposes. IRC §2611. See 9.

3.60.(b) Powers of Appointment. IRC §2041.

3.60.(c) Property taxed in other estates within 10 years of death for tax on prior transfer credit. IRC §2013.

3.61. Consider whether there are any unusual circumstances warranting early estate distributions and/or preparation of estate income tax plan. See 7.

3.62. Consult with decedent's personal accountant about pending tax returns and audits thereof, adjustment of future estimated payments, estate and trust fiscal years, tax status of beneficiaries, etc.

3.63. Ascertain whether any credit card balances covered by life insurance through issuer of credit card.

3.64. Consider whether estate or trust created under will have to join in Subchapter S election.

3.65. Consider IRC §754 election to adjust basis of deceased partner.

4. First Month After Death - Insurance

4.01. Evaluate existing general insurance coverage, making certain that the coverage protects everyone with an insurable interest.

4.02. Obtain and complete proofs of claim on all life insurance coverage.

4.03. Ascertain all relevant information about all of the life insurance policies on the decedent's life.

4.04. Review the payment provisions and beneficiary designations of all policies on the decedent's life.

4.05. Retain a copy of each insurance policy on the decedent's life before submitting it for payment.

4.06. Advise insurance beneficiaries of the deductibility of interest on policy loans, which is retained by the insurance company.

4.07. Consider repaying outstanding policy loans, if permitted, to maintain maximum amount under settlement option.

4.08. Determine what disposition should be made of each insurance policy owned by the decedent insuring someone else.

4.09. Request each insurance company to furnish a Form 712, showing the value of each policy on the decedent's life, and assignments of policy ownership.

4.10. Be certain that information furnished in claiming group insurance proceeds accords with the facts applicable to the decedent and death certificate.

4.11. Advise the decedent's family members to arrange to replace medical and hospitalization insurance coverage which was issued to the decedent and which ended at death.

4.12. Consider delaying the submission of a claim for insurance proceeds on policies issued less than two years before the decedent's death.

4.13. Offer to sell unexpired casualty policies to the recipients of specifically bequeathed property, at the short rate value of those policies, if they have not been specifically bequeathed with the property.

4.14. Locate all insurance policies insuring the decedent's life, including those which appear to have lapsed.

4.15. Submit necessary claim forms to obtain reimbursement for medical expenses incurred during the decedent's life, both to commercial carriers and Medicare.

4.16. Determine whether each insurance policy on the decedent's life will pay interest on the death proceeds from the date of death, and elect settlement options on those which will not.

4.17. File proof of the ages of the decedent and beneficiaries with all insurance companies, if requested, to facilitate the proceeds payment.

4.18. Determine the ownership of those life insurance policies which appear to be owned by a partnership in which the decedent was a partner, or a corporation in which the decedent was a stockholder, or a limited liability company in which the decedent was a member.

4.19. Change the beneficiary on all policies insuring the lives of others, which are payable to the decedent.

4.20. Determine any potential liability of the decedent's insurance agent for inadequate life, health, liability or property insurance coverage.

4.21. Review separation agreements and divorce decree involving the decedent and his former spouse, to determine whether the spouse is entitled to retain insurance policy proceeds paid to him/her.

4.22. Determine whether the decedent attempted to change the beneficiary of any of his insurance, without apparent success.

4.23. Make certain that the beneficiary provisions of the decedent's insurance policies comply with all requirements of any applicable separation agreement or divorce decree.

4.24. Review conditional premium receipts for any recently purchased insurance policies on the decedent's life.

4.25. Examine all circumstances of the decedent's death to ascertain whether accidental death benefits may be payable.

4.26. Analyze all insurance policies in force affecting the decedent to determine whether any of his life or medical coverage provides payments for funeral expenses.

4.27. Request Treasury Form 938 from each insurance company issuing any policy owned by the decedent on the life of anyone else, to establish its value.

4.28. Consider bringing an action against the decedent's former employer if no notice was given of the decedent's right to convert his group life insurance.

4.29. Determine whether to maintain existing general insurance policies in force, to increase their coverage, or to terminate them for a short-rate premium refund.

5. Within 3 Months of Death - General

5.01. Review all insurance policies to ascertain need for new or additional coverage or elimination of other coverage.

5.02. Arrange for appraisals of both personal and real property. Discuss selection of appraiser with interested family members.

5.03. In connection with appraisals, review all relevant financial information and homeowners and personal property policies.

5.04. Prepare cash requirements analysis in conjunction with inventory.

5.05. Review Powers of Appointment to determine taxability. IRC 2041. If Ancillary probate proceedings required, consider possible state differences in taxability with Federal rules.

5.06. Ascertain if decedent had any foreign property interests and review laws of foreign jurisdiction to determine procedures for administration, tax computation and tax liability.

5.07. Ascertain if decedent ever lived in community property state where property at death may be considered to be community property.

5.08. Review any questionable claims that were charitable pledges before payment. Consider assets used to satisfy charitable pledges.

5.09. Consider qualified disclaimers under Code Section 2518 within 9 months of death. Make necessary calculations to determine any tax savings. Review local law (N.Y. EPTL – 2-1.11) concerning disclaimers to ascertain that Federal requirements are satisfied. See 2.03, 12.09 and 13.06.

5.10. Consider whether surviving spouse possesses elective share under state law. EPTL 5-1A.

5.11. Review possibility of generation-skipping transfers. IRC §2611. See 9.

5.12. Consult with personal accountant for decedent with respect to final income tax returns for decedent. See 6.

5.13. Obtain tax waivers on all securities, bank accounts, insurance policies and other assets requiring them.

5.14. Obtain Federal and state releases of liens for real property and personal property which will be sold during administration. See 3.04(b).

5.15. Obtain copies of all estate tax returns for estates in which the decedent received any benefits or if there are future benefits payable to other family relatives or others. IRC §2013.

5.16. Determine whether the estate contains any Treasury Bonds redeemable at par in payment of Federal estate tax.

5.17. Before distributing assets, consider whether there is any need to apportion Federal or State death taxes against any recipient of assets, and if necessary, collect that tax. EPTL 2-1.8.

5.18. Advise family members and other donees of the problems implicit in disposing of assets given to them by the decedent within the past three years.

5.19. Investigate into the ownership of personal and household effects, and attempt to prove that title is in others than the decedent.

5.20. Determine the incidence of estate tax on property passing pursuant to contractual obligations of the decedent.

5.21. Ascertain whether any family members or others may have loaned assets to the decedent, which can give rise to an enforceable obligation to repay.

5.22. Determine whether any of the decedent's assets represent separate property which had previously been converted from community property.

5.23. Attempt to establish the sources of contribution from the decedent and non-spousal joint tenants to any jointly held property.

5.24. Identify which of the decedent's assets constituted community property.

5.25. Attempt to learn the explanation for any cash hoards or fictitious registration of securities, bank accounts or other assets in the decedent's name.

5.26. Ascertain all gifts made by the decedent during his lifetime which exceeded the statutory limitations, and all gifts of future interests made in the preceding three years.

5.27. Determine whether to request an extension of time to file the estate tax returns.

5.28. Consider the impact on the marital deduction or the charitable deduction or the estate of electing to value the estate on the alternate valuation date. IRC § 3032

5.29. Determine the effect on the marital deduction or the charitable deduction or the estate of electing to value estate assets under IRC § 2032A.

5.30. Determine whether other recipients of property should make qualified disclaimers to increase the allowable marital and charitable deductions. IRC §2518.

5.31. Consider instituting an action to construe the will in state court, to resolve potential disputes as to the allowability of the marital and charitable deductions. SCPA 1420.

5.32. Recommend whether the surviving spouse should elect against the will, claim dower and then commute the dower rights, to qualify for the marital deduction.

5.33. Determine whether decedent received any assets from any prior decedent within the past 10 years or from any subsequent decedent within the following two years, which will entitle the estate to a credit for transfers previously taxed. IRC §2013.

5.34. Advise executor whether to exercise the election provided by IRC §2053(d) to deduct state and foreign death taxes imposed on charitable transfers.

5.35. Recommend whether the executor should deduct casualty losses pursuant to IRC §2054 against the estate tax, or pursuant to IRC §165 against the income tax.

5.36. Determine whether any specifically bequeathed property has been adeemed, and whether the legatee is entitled to the proceeds of the ademption.

5.37. Arrange to deliver specifically bequeathed personal property to the legatees named in the will, as soon as possible after probate, once appropriate executed Forms of Receipt and Release are received.

5.38. Determine whether funds in Totten Trust accounts can be delivered to the beneficiaries of those trusts.

5.39. Consider sale of securities held in the estate which have a current market value below cost basis, rather than distributing them to beneficiaries.

5.40. Determine whether the co-depositor of a joint bank account is entitled to the proceeds on deposit at death, and if so, deliver those funds to him.

5.41. Deliver all United States Savings Bonds which are jointly owned or payable on death, to the named beneficiary, after assuring that no contribution to death taxes will be required.

5.42. Arrange to transfer all jointly owned assets to the surviving joint owner, after assuring that no contribution to death taxes will be required.

5.43. Prepare Preliminary Inventory setting forth assets, liabilities, estate taxes and proposed distributions for distribution to executors, etc.

6. Within 4 Months of Death - Income Taxes (Form 1040)

6.01. Form 1040 - Review last 3 years' income tax returns and ascertain whether any are presently under audit.

6.02. Form 1040 - Discuss with accountant possible extension of time to file decedent's last return, if required, on Form 4868 (automatic) or Form 2688 (non-automatic).

6.03. Form 1040 - Consider effect of possible sale of family residence.

6.04. Form 1040 - Advise the surviving spouse as to the desirability of amending declaration of estimated taxes due.

6.05. Form 1040 - After reviewing the decedent's returns for all open years, consider whether to file amended returns, claims for refund and requests for prompt audit.

6.06. Form 1040 - Consider whether it is more advisable to deduct unpaid medical bills on the estate tax return or on the decedent's final income tax return. IRC §213(d).

6.07. Form 1040, Form 1041 - Recommend whether to redeem Series E Savings Bonds, and the timing of redemptions.

6.08. Form 1040 - Consider whether to file joint income tax returns with the surviving spouse.

6.09. Form 1040 - Advise any beneficiary with a power to withdraw assets from a trust of the adverse income tax consequences of the power, and suggest renouncing it.

6.10. Form 1040 - Consider and discuss with accountant desirability of realizing capital gains in the year of death to offset the decedent's unused capital losses realized before death.

6.11. Form 1040 - Determine allocation of any income tax refund attributable to joint returns filed by the decedent and the surviving spouse. Request accountant to prepare allocations on Form 3-212, IRC Reg. 20.2053.- 6(f).

6.12. Form 1040 - Consider whether the Executor should disaffirm any joint income tax return filed by the surviving spouse before the Executor was appointed.

6.13. Form 1040 - Advise the Executor and surviving joint owners of the election to currently report interest on Series E Savings Bonds.

6.14. Form 1040 - If refund due file Form 1310 and certificate of letters testamentary or administration with Form 1040.

7. Within 4 Months of Death - Income Taxes (Form 1041)

7.01. Form 1041 - Consider what fiscal year the executor should adopt for the estate.

7.02. Form 1041 - Identify expenditures which will be deductible as debts on the estate tax return and as expenses on the estate's income tax return.

7.03. Form 1041 - Consider capital gains tax impact of satisfying pecuniary legacies with appreciated assets.

7.04. Form 1041 - Consider the income tax consequences to the beneficiaries of distributing personal and household effects which are not specifically disposed of in the will.

7.05. Form 1041 - Caution the executor against distributing an item of income in respect of a decedent in satisfaction of a pecuniary legacy.

7.06. Form 1041 - Consider whether it is more beneficial to deduct administration expenses on the estate tax return or on the fiduciary's income tax return.

7.07. Form 1041 - Request information from the principal beneficiaries of the estate as to their income tax brackets.

7.08. Form 1041 - If extension necessary, use Form 2758.

7.09. Project the anticipated income tax savings to be achieved by funding trusts on an interim basis, to obtain multiple taxpayers for income tax purposes.

7.10. Evaluate the advantages of making discretionary distributions of principal to carry out distributable net income, and of using appreciated assets to do so.

7.11. Consider whether to immediately satisfy a bequest made to someone, which is conditioned on the legatee being alive at the time of distribution to him.

7.12. Consider the income tax advantages to the beneficiaries of accumulating all income in the estate until final distribution, or whether interim distributions should be made.

7.13. Consider the income tax effects of distributing different kinds of assets to different beneficiaries, based upon their own tax brackets.

7.14. Consider necessity of estimated income tax payments by the estate.

8. Within 4 Months of Death - Gift Tax (Form 709)

8.01. Review copies of all gift tax returns the decedent filed during his lifetime.

8.02. Recommend whether the decedent's surviving spouse should join in any gift tax returns which the Executor must file.

8.03. Consider whether the executor should request prompt audit of any of the gift tax returns filed by the decedent or by the Executor.

8.04. Ascertain whether it is advisable for the Executor to amend any gift tax returns previously filed by the decedent.

8.05. Determine whether it would be advantageous for the Executor to join with the surviving spouse in electing to treat gifts made by the spouse as having been made one-half by the decedent.

8.06. Consider whether the Executor is obligated to file gift tax returns for any periods prior to death for which returns have not been filed.

8.07. Ascertain whether the decedent paid gift tax on any gifts made before or after 1977, which are includible in the gross estate.

8.08. Advise recipients of all gifts from the decedent of their own potential liability to pay the gift tax imposed on their gifts.

8.09. Consider whether the Executor should ratify any gift tax return filed on the decedent's behalf during his lifetime.

9. Within 4 Months of Death - Generation-Skipping Tax - IRC §2601

9.01. Determine whether there are any generation-skipping transfers which occur at the decedent's death or within nine months thereafter.

9.02. Consider the impact on the generation-skipping tax of the election to deduct administration expenses on the income tax return or the estate tax return.

9.03. Determine the effect on the generation-skipping tax of deducting medical expenses on the estate tax return or the income tax return.

9.04. Estimate the cost in generation-skipping tax of electing to value the estate on the alternate valuation date.

9.05. Consider whether the reduction in generation-skipping tax justifies making the special use election under IRC §2032A.

9.06. Calculate the generation-skipping tax which will result from enhancing the marital deduction.

9.07. Ascertain the additional generation-skipping tax which will result from enhancing the marital deduction.

9.08. Advise family members concerning the making of qualified disclaimers to minimize the generation-skipping tax, or to eliminate it.

9.09. Ascertain whether any generation-skipping transfers occurring at the decedent's death or within nine months afterward will increase the marital deduction bequest.

9.10. Consider the generation-skipping tax consequences of the spouse's election against the decedent's will.

9.11. Compute the generation-skipping tax costs of electing to take the proceeds of qualified death benefits in a single sum.

9.12. Determine whether there can and generation-skipping tax for transfers previously taxed in the estates of prior decedents.

9.13. Consider the generation-skipping tax consequences of the valuation of assets in the estate.

9.14. Consider the use and allocation of the GST Exemption (\$5,450,000 in 2016 (absent new legislation) and, if applicable, the prior use of the per transferee exemption for direct skips.

9.15. Consider the generation-skipping tax consequences of electing to deduct casualty losses against the estate tax other than against the income tax.

10. Within 4 Months of Death - Employee Benefits

10.01. Notify the Social Security Administration to adjust or terminate benefits, and claim lump-sum payment (if surviving spouse).

10.02. Determine eligibility for Veterans' Administration benefits, and claim them.

10.03. Determine eligibility for payments under qualified pension and profit-sharing plans.

10.04. Advise surviving spouse concerning roll-over election to IRA.

10.05. Review qualified pension and profit-sharing plan designations and elections.

10.06. Compute any contributions made by the decedent to qualified pension and profit-sharing plans.

10.07. Determine whether the beneficiary should elect to withdraw a lump-sum payment from a qualified pension plan or profit-sharing plan.

10.08. Review non-qualified deferred compensation agreements.

10.09. Exercise employee stock options which will expire shortly after death.

10.10. Claim any disability lump-sum payments provided under employer-sponsored group insurance.

10.11. Determine whether the decedent became entitled to any workmen's compensation benefits.

10.12. Ascertain the amount of unpaid salary, bonus and vacation pay to which the decedent was entitled at his death.

10.13. If a lump-sum is to be taken from a qualified benefit plan, advise the recipient on the desirability of waiving the right to use the 5-year averaging method of computation.

11. Within 4 Months of Death - Business Interests

11.01. Determine whether there are any restrictions on the transferability of closely held business interests and if so, whether they are valid.

11.02. Determine whether the Executor has authority to continue to operate the decedent's sole proprietorship.

11.03. Consider the effect of electing to deduct administration expenses on the income tax return or the estate tax return on the estate's qualification under IRC §303 and IRC §6166.

11.04. Determine the impact of electing the alternate valuation date on the estate's qualification under IRC §303 and IRC §6166.

11.05. Evaluate the effect of the surviving spouse's election against the will and disclaimer on the estate's qualification under Section 303 and Section 6166.

11.06. Determine if charitable gifts made by the decedent during his life will reduce his taxable estate to permit qualification for IRC §6166 tax deferral.

11.07. Make immediate cash available to insure the continued operation of the decedent's sole proprietorship.

11.08. Arrange for the temporary management of the decedent's sole proprietorship or professional practice.

11.09. Make a final disposition of the decedent's confidential professional or business records.

11.10. Consider transferring a sole proprietorship to family members or to a corporation or to a limited liability company to avoid a fiduciary operating it.

11.11. Obtain a license for a family member to operate the decedent's business, for which a license is necessary.

11.12. Consider selling a sole proprietorship or sole professional practice.

11.13. Review existing business buy-sell agreements.

11.14. Initiate actions necessary to comply with the buy-sell agreement.

11.15. Reconsider buy-sell agreement provisions covering disposition of Section 306 stock.

11.16. Make arrangements to retain the decedent's closely held business interest which is to be kept for the family.

11.17. If an existing buy-sell agreement has been nullified by informal acts constituting a waiver of its provisions, prepare a revised agreement.

11.18. Ascertain whether there is any agreement, which provides for a continuation of the decedent's salary to his surviving family members or estate.

11.19. Determine whether the use of Section 6166 would be more beneficial to the estate than using estate tax discount bonds to pay estate taxes.

11.20. Consider recapitalizing a corporation in which the decedent owned an interest, to convert the estate's stock into preferred stock.

11.21. Evaluate the possibility of having a publicly held corporation acquire the decedent's closely held corporation.

11.22. Assess the desirability of immediately beginning a public offering of stock in a corporation in which the decedent held an interest, or discontinuing an offering which has begun.

11.23. Change any registration statement affecting any stockholdings in a corporation in which the decedent was a key man.

11.24. Arrange to deliver shares of stock the decedent was selling under a pending registration statement.

11.25. Obtain releases and indemnifications from liability for all corporate directorships which the decedent occupied.

11.26. Evaluate whether it is desirable for the Executor to terminate the Subchapter S election with respect to any corporation in which the decedent held stock.

11.27. Consider disposing of Subchapter S stock held in the estate if the estate is left to inter vivos or testamentary trusts.

11.28. Consider whether the estate would be better advised to borrow from commercial sources to obtain funds with which to pay estate taxes, rather than using one of the tax deferral provisions of the Code.

11.29. Consider whether the Executor should cause any corporation owned by the estate to elect to be taxed pursuant to Subchapter S.

11.30. Consider whether to amend the decedent's partnership agreement to permit the estate or surviving spouse to be treated as the decedent's successor.

11.31. Recommend whether the decedent's former partners should elect to adjust the basis of partnership property. IRC §754.

11.32. Obtain and file a lien agreement among the Executor and all interested parties, to discharge the Executor from personal liability under Section 61661.

11.33. Ascertain whether the decedent had loaned money to any business in which he held an interest, which remained unpaid.

11.34. Determine whether the surviving business owners have full complied with all of the provisions of the buy-out agreement.

11.35. Evaluate whether the terms of any buy-out agreement are so onerous or unfair that it can be set aside as unconscionable.

11.36. Obtain realistic evaluations of all interests in closely-held businesses, even those which appear to be subject to binding buy-out agreements.

12. Within 5 Months of Death - Fiduciary Relations

12.01. Secure the appointment of a successor custodian under the Uniform Gifts to Minors Act, if the decedent was acting in that capacity.

12.02. Ascertain the sources of property held by the decedent as custodian under the Uniform Gifts to Minors Act.

12.03. Determine whether the Executor should disclaim any interests in trusts and estates in which the decedent had recently received vested beneficial interests.

12.04. Defer or accumulate distributions of income from trusts of which the estate is a beneficiary, if the estate and trusts are on differing fiscal years.

12.05. Determine whether the Executor should elect against or contest the will of a prior decedent.

12.06. Determine the need for judicial versus non-judicial accounting in all situations where the decedent was a fiduciary or beneficiary.

12.07. Petition the court to appoint a successor fiduciary in any estate, trust or other fiduciary position in which the decedent was acting.

12.08. Review any exercise or non-exercise of powers of appointment which the decedent possessed.

12.09. Evaluate the desirability of the Executor disclaiming a general power of appointment over a marital deduction trust which the decedent received from a recently predeceased spouse. IRC §2518, EPTL 2.1.11. See 2.03, 5.09 and 13.06.

12.10. Determine how Federal and state death taxes are to be apportioned on all property subject to powers of appointment held by the decedent.

12.11. Recommend that the Executor exercise options given to the decedent to acquire property under the wills of prior decedents.

12.12. Advise surviving family members to amend or revoke revocable trusts under which the decedent has a contingent interest.

12.13. Determine the availability of the tax deferral provisions of IRC §6163, if the estate contains any non-possessory reversion or remainder interest.

12.14. Make sure that the decedent had received all income to which he was entitled during his lifetime from all trusts of which he was the income beneficiary.

12.15. Consider whether the decedent's will effectively revoked any inter vivos trusts which he might have created.

12.16. Review all trusts created by the decedent during lifetime to make sure that the income was not properly taxable to him.

12.17. Advise the trustee of any trust to which the decedent transferred assets within the past two years, of the ability to sell assets regardless of IRC §644.

12.18. Review all trusts created by the decedent during lifetime to determine whether any reversion was retained, either advertently or inadvertently.

13. Within 6 Months of Death - New York Inventory

13.01. Consider whether any beneficiaries should disclaim interests under will. IRS §2518, EPTL 2-1.11.

14. Within 7 Months of Death - Flower Bonds - Claims

14.01. If Flower Bonds in estate, complete Forms GB232 and PD1782 and process directly through Federal Reserve Bank, if we have physical possession of bonds, or through custodian bank if bank has custody. Try to obtain a receipt for presentation of bonds for redemption.

14.02. Await receipt of F.E.T. Memo from Federal Reserve Bank showing crediting of bonds and interest through payment due date, to estate.

14.03. Satisfy all general legacies made in the will as soon after the expiration of the non-claim period as is convenient. SCPA Article 18.

15. Within 9 Months of Death - Federal, New York. Estate Taxes

15.01. Consider whether to request extension of time to file and to pay (IRC §6081) on Form 4768, in triplicate, which should be hand delivered or mailed by Registered Mail, Return Receipt Requested, together with transmittal letter, to IRS, in Cincinnati. Obtain receipted copy of transmittal letter and Form 4768.

15.02. Any payment to be made should be by Registered Mail, Return Receipt Requested to New York, if New York estate and by Registered Mail, Return Receipt Requested, to Georgia if Florida estate.

15.03. File Form 706 return as set forth in 15.01 with transmittal letter, to be receipted.

15.04. Consider requesting extension of time to pay estate tax pursuant to IRC §6161 (on reasonable cause), IRC §6163 (on value of reversionary or remainder interest in property, or IRC §6166 (on closely held business or farm property).

15.05. File Form ET-706 and make payment to New York State Department of Taxation and Finance, and, in all cases, obtain a receipted copy of the transmittal letter.

15.06. When payment made, request that any releases that are being held by New York State be provided. See 3.04(b).

15.07. Consider paying estate taxes in installments pursuant to New York Tax Law §962(f).

15.08. Consider requesting extension of time to pay New York estate tax and if necessary file Form ET-133 Application for Extension of Time To File and/or Pay Estate Tax.

15.09. File required Inventory in Surrogate's Court executed by Executor or attorney for estate if tax return due. Rule 207.20.

15.10. File required Form 8971, Information Regarding Beneficiaries Acquiring Property From a Decedent, within 30 days of filing ET 706.

16. Audit of Form 706

16.01. Forms required for completion of audit:

16.02.(a) Power of attorney - Form 2848.

16.02.(b) Fees and commissions - Form 4421.

16.02.(c) Release of federal estate tax lien - Form 4422.

17. Termination of Estate - Final Distribution

17.01. Verify that no interests in the estate have been assigned by any of the beneficiaries, or attached by creditors by checking records in Surrogates Court.

17.02. Determine the identities of all persons interested in the settlement of the estate, including residuary legatees, creditors and others, and obtain jurisdiction over them.

17.03. Consider whether it is necessary to prepare an executor's deed to evidence transfer of title of estate-owned real estate.

17.04. Consider whether the appointment of a guardian ad litem will be required on the final accounting, and determine how best to deal with this.

17.05. Determine whether to terminate the estate at the end of its fiscal year, at the beginning or in between.

17.06. Consider whether the Executor should render a final judicial accounting or whether the accounting should be non-judicial or immediate.

17.07. Advise beneficiaries as to their entitlement to claim deductions for estate losses, and as to their liability for income tax on the estate's income in the final year.

17.08. Calculate what adjustments may be required to be made to compensate for deducting expenses on the estate tax return rather than on the income tax return, and vice versa. Warms and Holloway adjustments.

17.09. Consider distributing wasting assets to the surviving spouse in satisfaction of marital deduction bequest, to reduce her ultimate tax liability.

17.10. Determine whether it is advisable to establish reserves for additional potential estate income, property, and generation-skipping taxes, as well as other possible liabilities.

17.11. Arrange for the cancellation of the fiduciary bond if one was required.

17.12. Consider necessity of filing Report of Estates Not Fully Distributed in Court pursuant to 22NYCRR 207.42.

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