



Office of the Probate Court

**Debora A. Faulkner**  
Probate Judge for Greenville County  
Greenville, South Carolina

[www.greenvillemounty.org/probate](http://www.greenvillemounty.org/probate)

## **PROBATING ESTATES**

You have now been appointed to administer or probate an estate and have received your Certificates of Appointment. You are beginning the probate process. Creditors have eight months from the date of the first publication in the newspaper for filing unsecured claims or one year from date of death, whichever is earlier. Thus the Court recommends that you do not distribute estate assets to any beneficiaries until after the claims period has expired. You cannot sell most estate property owned by the decedent without the authority to do so granted in the Decedent's Last Will and Testament or a Court Order granting this specific authority. The following information concerning the statutory requirements of administering an estate is furnished to assist you during the course of your administration. Please do not hesitate to ask specific procedural questions about any problem encountered which is not explained here. The staff of this Court will be happy to furnish assistance and information regarding general procedures to the extent allowed by law. Beyond that, legal counsel is recommended and often required.

### 1. **NOTICE TO CREDITORS**

If one year from the date of death has not passed, immediately after appointment, the Personal Representative is required to publish the Notice to Creditors advertisement. Publication is to be once a week for three consecutive weeks. In Greenville County, the Probate Court handles this for you, and publication is in the Greenville News. The current fee for advertising is \$46.00, which was paid when the estate was opened. Creditors, by law, have eight months from the date of first publication of this notice to file claims. If the appointment of the Personal Representative is made after one year from date of death, no publication is required.

### 2. **INFORMATION TO HEIRS AND DEVISEES**

Within 30 days after your appointment you must give information of your appointment and the probate of the Will, if applicable, to all devisees **and** heirs by mailing them a copy of the Information to Heirs and Devisees (FORM 305ES). [Devisees are those named to inherit anything in the Will, and the heirs are those who would inherit if there were no will. Both groups must be sent this form.] You must return the Proof of Delivery (Form 120PC) to the Probate Court along with a copy of the Information to Heirs and Devisees form to show this step has been completed. If you use a different manner of delivering notice for different persons, please indicate such on the Proof of Delivery form. Due Date: \_\_\_\_\_

### 3. **INVENTORY AND APPRAISEMENT**

Within 90 days after your appointment, you must file an Inventory and Appraisal (FORM 350ES) with the Probate Court. You are to list and value all **probate** assets owned by the decedent at death including property owned with another person (*joint tenants in common*). You may petition the Probate Court to authorize the employment of appraisers (FORM 351ES) if you feel there is a need. Take care to discover, list, and value all

probate assets (including fractional interests and inherited interests) to avoid delays in closing this estate later. In the event an extension is needed, please submit a Motion for Extension (FORM 352ES) prior to the Inventory due date. Due Date: \_\_\_\_\_

Upon receipt of the Inventory, a Court cost will be assessed and billed:

\$0 - \$5,000 .....	\$25.00
\$5,000-\$20,000 .....	\$45.00
\$20,000-\$60,000 .....	\$67.50
\$60,000-\$100,000 .....	\$95.00
\$100,000 - \$600,000 .....	\$95.00 + .15% for amount over \$100,000 up to \$600,000
\$600,000+ .....	\$845.00 + 1/4 of 1% over \$600,000

***(Payment to be made by check or money order preferred; make payable to Greenville County Treasurer. Starter checks or checks not imprinted with a name and address cannot be accepted. Payments are receipted into the County's general fund.)***

4. **CLAIMS**

Eight months after the first publication of the Notice to Creditors, the period for filing creditor's claims expires. If you have not already done so, proceed to resolve the claims. If the assets of the estate are insufficient to pay all claims in full, payment is to be made in the following order and may need to be prorated.

- 1) Costs and expenses of administration, including attorney's fees and reasonable funeral expenses;
- 2) Debts and taxes with preference under federal law;
- 3) Reasonable and necessary medical expenses, hospital expenses, and personal care expenses of the last illness of the decedent, including compensation of persons attending the decedent prior to death;
- 4) Debts and taxes with preference under other laws of this State, in order of their priority, including medical assistance paid under Title XIX State Plan for Medical Assistance as provided for in Section 43-7-460;
- 5) All other claims.

*After the 8-month creditors claim period has expired, proceed to resolve all claims. Once this is accomplished, you may proceed with the closing steps of the estate.*

NOTE: If there are any claims that have been filed against the estate, a deed of distribution should not be completed until the claims are satisfied, compromised, resolved, or disallowed. If the real estate needs to be sold for debts, a court order may need to be obtained for permission to sell, and a deed of distribution may not be necessary. Please contact your attorney for assistance under these circumstances.

5. **CLOSING**

**DEED OF DISTRIBUTION**

If there is real estate in the estate and it has not been sold, a Deed of Distribution (FORM 400ES) must be filled out and recorded. It is recommended that an attorney assist you with this particular duty. The Deed of Distribution transfers the real property from the decedent's name to those who inherit it. For Greenville County real property, this document will be recorded in the Register of Deeds Office (Suite 1300 after paying them the fee of \$10.00 plus any postage fees that may apply. A copy of the *recorded* Deed of Distribution needs to be filed at the Probate Court. Real property located in other South Carolina counties will require the Deed of Distribution be recorded in that location. You should then deliver the recorded Deed of Distribution to the new owners of the property.

**ACCOUNTING**

If all claims have been resolved, between eight months and twelve months after the first publication of the Notice to Creditors (or, if this is a taxable estate, 90 days after receipt of the estate tax closing letter), you must file with the Probate Court a complete accounting (FORM 361ES) of the entire estate administration (probate assets received during the course of administration, disbursements/bills paid out, and balance to be distributed to the beneficiaries). If applicable, file a Proposal for Distribution (FORM 410ES) indicating assets which have not yet been accounted for or have not yet been distributed. All devisees (heirs in intestate estates) may waive this requirement by completing FORM 364ES.

### **APPLICATION FOR SETTLEMENT**

Complete and file your Application for Settlement (FORM 412ES) with the Probate Court.

### **NOTICE OF RIGHT TO DEMAND HEARING**

The Notice of Right to Demand Hearing (FORM 416ES) is to be sent to all interested parties, including unpaid creditors, along with a copy of the full Accounting, Proposal for Distribution (if applicable), and Application for Settlement. A Proof of Delivery (FORM 120PC) indicating that you have sent these documents must be filed with the Probate Court. If no written requests for a hearing are received by the Probate Court within 30\* days, you may proceed with making your final distributions and completing the final requirements as outlined by the Probate Court. This will include beneficiary receipts from the distributees (FORM 403ES), release of claims (FORM 325ES), copy of recorded deed of distribution for real estate (FORM 400ES), and copy of transfers for titled personal property (i.e., stocks, cars, etc.). You will need to check with your assigned Judicial Assistant to determine any other final requirements. Upon receipt of all final documents, the Probate Court will issue an Order closing the file and terminating your appointment as Personal Representative (FORM 413ES). If you do not receive an order, the estate is not closed.

\*The 30-day period can be waived if Waiver (FORM 111ES) is signed by all interested parties.

### **TRANSFER OF ALL ESTATE ASSETS:**

The Probate Court will need a copy of all probate asset transfers. All estate assets consist of those assets that were listed on Schedules A, B, C, D part 1, F, and G, H, I if they were payable to or benefit from the estate on the Inventory and Appraisal (FORM 350ES) filed in the Probate Court.

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## **GENERAL CONSIDERATIONS**

**Appointments required:** When coming to the Probate Court to transact any estate business, you will need to contact your assigned Judicial Assistant to **schedule an appointment**. Court personnel have 48 hours to return any voice mail message or emails that you may send.

**Forms:** One set of forms for each task will be given to the Personal Representative. Any additional blank forms can be obtained at the Probate Court for \$.25 per form or from the county website ([www.greenvillecounty.org/probate](http://www.greenvillecounty.org/probate)).

**PR Commission:** Generally, a Personal Representative is entitled to a commission of 5% based on the appraised value of personal property of the probate estate, sales proceeds of real estate specifically sold by the Personal Representative, and income earned by the probate estate. Probate estate personal property consists of those items listed on the Inventory and Appraisal under Schedules B, C, D part 1, F, and G, H, I if payable to the estate. For further detail, see SCPC, Section 62-3-719.

**Estate Bank Account:** In order to keep proper books for the estate, you may wish to establish an *estate bank account* in which you will deposit money belonging to the decedent which comes into your hands and pay all claims and bills by check. By doing this, you will have no trouble in keeping the account in exact balance and

preparing your final accounting.

**Formal proceeding:** If you or anyone else files a formal Petition requiring a hearing during the course of administration, it is highly recommended that an attorney be employed. The Court cannot advise on matters which it must decide.

**Demand for Notice:** If at any time during the administration of the estate you receive a Demand for Notice (FORM 111ES), you must comply with the request and send a copy to the demandant of whatever is demanded; you will be required to provide the Court with a Proof of Delivery (FORM 120PC) indicating what you have served on whom.

**No Faxed Copies:** The Court will not accept faxed copies of probate forms to include faxed copies with original signatures. The forms must be free of whiteout or any alternations in order to preserve the intentions of the person signing the form.

**Black Ink Only:** All probate forms are to be typed or completed in BLACK ink.

**Inheritance Tax Limit:** For inheritance tax purposes, an estate is considered taxable if the gross value at date of death is more than:

<u>DATE of DEATH</u>	<u>FILING REQUIREMENT</u>
1/1/1962 – 12/31/1978.....	\$60,000
1/1/1979 – 6/30/1988.....	120,000
7/1/1988 – 6/30/1989.....	140,000
7/1/1989 – 6/30/1990.....	170,000
7/1/1990 – 6/30/1991.....	320,000
7/1/1991 – 12/31/1997.....	600,000
1/1/1998 – 12/31/1998.....	526,000
1/1/1999 – 12/31/1999.....	650,000
1/1/2000 – 12/31/2001.....	675,000
1/1/2002 – 12/31/2003.....	1,000,000
1/1/2004 – 12/31/2005.....	1,500,000
1/1/2008 – 12/31/2008.....	2,000,000
1/1/2009 – 12/31/2009.....	3,500,000
1/1/2010 – 12/31/2010.....	5,000,000 with special IRS Rules
1/1/2011 .....	5,000,000
1/1/2012 .....	5,120,000
1/1/2013 .....	5,120,000
1/1/2014 .....	5,340,000

Contact a CPA, attorney or the IRS ([www.irs.gov](http://www.irs.gov)) for further tax information and/or guidance.

If you need a Tax ID number (EIN), there are four methods to apply for the number through IRS:

- Phone 1-800-829-4933 (for SC residents) after the English/Spanish question, press option one
- Internet on-line at [www.irs.gov](http://www.irs.gov); complete Form SS-4
- Fax 1-631-447-8960 (for SC residents)
- Mail in Form SS-4

**Unclaimed Property:** Prior to closing your estate, you may wish to check the cite for South Carolina's Palmetto Payback Program for unclaimed property to be sure your decedent does not have any further assets to receive: [www.unclaimed.org](http://www.unclaimed.org).

**For more information consult an attorney for read SCPC, Title 62,** available for viewing at the Public Library, Law Library, or on the Internet: [www.scstatehouse.gov/code/titl62.htm](http://www.scstatehouse.gov/code/titl62.htm)