

INSTRUCTIONS TO PERSONAL REPRESENTATIVE

The following contains general information about the laws on Oklahoma and is intended to act solely as a guideline for administration of an estate. If decedent dies without a will, then the decedent's property will pass according to the laws of succession of that state. If there is no will and there are no heirs at law, then the property will escheat to the state. If there is a will, then the will is probated, and the court supervises the payment of bills and distribution of property. Please consult with a lawyer to see how property would be devised under a specific state's descent and distribution laws or how probate proceedings work.

The probate court will first appoint an administrator, or the will appoints an executor, whose duties will include asset gathering, debt paying and distributing tasks.

- I. As soon as reasonably possible after the death of the decedent, you should take the following actions:
 - A. **Life Insurance.** You should gather all original life insurance policies on the life of the decedent and begin the claim procedure. This may be done by contacting (either by telephone or in writing) each insurance company and requesting that they forward to you the appropriate claim forms. However, the decedent's insurance agent, if any, will usually handle this for you. When the claims are filed, each company should be asked to forward what is called a "Form 712" to your attorney. You should follow the same procedure for claims under any annuities or retirement benefits.
 - B. **Social Security Benefits.** You should contact the local Social Security office to determine what, if any, benefits may be payable.
 - C. **Bank Accounts.** You should notify each bank where the decedent had a bank account or other cash investment (such as Certificate of Deposit). This will be necessary for all accounts, whether they were listed in the decedent's name only or in the decedent's name jointly with any other person. (This will also be necessary for any safe deposit boxes, as discussed below).
 - D. **Safe Deposit Box.** You should contact any banks where the decedent had a safe deposit box and make arrangements to have the box inventoried. This is a simple procedure whereby you will make an appointment and you and a bank employee will jointly make a list of all items in the safe deposit box. You should deliver a copy of the inventory to your attorney. If the decedent's original Will is in the safe deposit box, you should remove it at this time and deliver it to your attorney.
 - E. **Payment of Funeral and Other Expenses.** You may, if you wish, go ahead and pay funeral expenses, for which you will later be reimbursed by the estate. You may also pay other minor necessary expenses, such as utility bills, for which you will also be reimbursed. For reimbursement purposes, you should keep a list of expenses paid.

However, you should delay payment of as many items as possible until after the court has appointed a personal representative.

- F. Attorney. As soon as possible, you should make an appointment with your attorney and bring with you the following information and documents:
1. Trust Agreement and/or Original Will (and Codicils, if any);
 2. Death Certificate;
 3. A list of the full names, ages and residential mailing addresses of all heirs, legatees and devisees (this will include spouse, children, children of deceased children, mother and father if there are no children, as well as all other organizations or individuals, including Trustees, who may be named in the Will or Codicils);
 4. A preliminary list showing the ownership (individual or joint), the nature (real estate or personal property) and approximate value of the decedent's assets.

The attorney will determine from this information whether or not a probate proceeding is necessary and, if so, will be able to prepare the required court documents. (The remainder of this instruction sheet assumes that probate proceedings will be required).

II. Initial Court Proceedings

- A. Pre-Appointment. Your attorney will prepare a Petition to have you appointed the Personal Representative of the estate and to have the Will admitted to probate (if there is a Will). After you have signed the Petition, the Will and other documents will be filed with the court. A hearing will be set approximately ten days after the documents are filed. In the meantime, a notice of the hearing will be mailed to all the heirs, devisees and legatees. They will not be required to attend the hearing but may do so if they so desire.
- B. Admitting Will to Probate. It may or may not be necessary for you to be present with your attorney at the initial hearing; each Judge has their own preferences and will let your attorney know beforehand if you are required to attend. If none of the interested parties contest the Will, the hearing will be very informal and will usually be held in the judge's chambers rather than in a courtroom. The judge will admit the Will to probate and will issue to you "Letters Testamentary," which you will sign in the presence of the judge. If there is no Will then the laws of the State of Oklahoma govern how the estate is to be distributed and the Court will appoint an "administrator" whose functions are the same as an executor under a Will. These Letters are your legal authority to transact business for the estate. Your attorney will provide you with a number of certified copies of the Letters for your use in handling the estate business.

- C. Notice to Creditors. Immediately after the hearing, your attorney will have you sign a Notice to Creditors. Oklahoma law requires that this Notice be mailed to all known creditors of the deceased that are reasonably ascertainable to advise creditor's to file claims for

III. After you have been appointed an executor or administrator of the estate, you should take the following actions:

- A. Bank Account. As soon as possible after administrator has been appointed, they should take a copy of the death certificate and a certified copy of letters of administrator and open an estate checking account at the bank of your choice. The account should be titled:

Your Name, Administrator
of the Estate of Decedent's Name,
Deceased.

All cash transactions, no matter how small, should be handled through this checking account, so that later the account will provide a single complete record of all transactions. This will make it much easier to complete some of the items which are necessary later, such as estate and income tax returns.

- B. Marshal Cash Assets. As soon as possible administrator should begin to collect all of the decedent's cash assets, such as checking and savings accounts, brokerage cash accounts and certificates of deposit. Administrator should either close all such accounts and deposit them to the estate checking account or transfer them to your name as Administrator of the Estate. Assets such as certificates of deposit can be withdrawn or transferred to your name as Administrator of the estate at no interest penalty.

Administrator should maintain enough cash in the checking account to pay the decedent's debts and the expenses which will be incurred in the administration of the estate and retain the remainder in an estate savings account, certificates of deposit or other types of cash accounts which are readily available.

- C. Safety Deposit Box. Administrator may wish to maintain an estate safe deposit box. If the decedent had an individual safe deposit box, administrator can usually simply have the same box re-registered in your name as Administrator of the estate.
- D. Other Assets. Administrator may wish to consider transferring other estate assets, such as stocks and bonds, real estate, and mineral interests, to your name as Administrator of the estate. However, it is frequently easier simply to leave such assets in the decedent's name until the administration proceedings are completed and it is appropriate to distribute the assets to the beneficiaries. You should consult an attorney to see how to proceed.

- E. **Payment of Expenses.** Administrator should begin to deposit all estate income to, and pay debts and administration expenses from, the estate checking account. Administration expenses include such items as court costs, bank charges, expenses of maintaining (not improving) estate property, and out-of-pocket expenses such as postage, travel and long-distance telephone expenses.

Your attorney will discuss with you the procedures for paying debts, which are expenses incurred by the decedent prior to death but which were unpaid at the time of death. In general, unless they are of a very small amount, you should not pay any debts until the creditor has submitted a claim which both you and the probate judge have approved. Even family members to whom the decedent may have owed money must submit a claim. You should not pay any debts for which a claim was submitted after the two-month period following publication of Notice to Creditors (as discussed above) without first consulting your attorney.

- F. **Listing Assets.** Within 2 months of appointment compile a very detailed list of the decedent's assets, both those held in the decedent's name only and those held in the decedent's name jointly, and if possible, determine the value of those assets as of the date of death. If inventory contains assets other than money this must be appraised. This information will be necessary in order to prepare estate tax returns, as discussed below. Administrator will be required to sign the estate tax returns, and it is extremely important that the information reported on the estate tax returns be complete and accurate.

- G. **Estate Tax Returns.** Estate tax returns are due nine months from the date of death. The filing of an estate tax return will almost always be required; however, this does not necessarily mean that there will be tax due.

- H. **Income Tax Returns.** Give some thought as to who will be retained to prepare the necessary income tax returns. Two types of income tax returns are required.

1. **Decedent's Final Individual Income Tax Return.** This tax return will cover the period from January 1 of the year in which the decedent died to the date of death. It will be due on the same date the decedent would file an income tax return if he or she were still alive.
2. **Fiduciary Income Tax Returns.** Beginning on the date of death, the estate, rather than the decedent, becomes the taxpayer for income tax purposes. Administrator will need to have the appropriate estate income records, such as Administrator's checking account records, for the preparation of this return.

The fiduciary (estate) income tax return is different from the estate tax return in that it covers only income, whereas the estate tax return covers the value of the assets owned and not the income produced from them.

IV. Court Determination of Heirship Where no Will

- A. **Determination of Heirship.** In order to determine the question of heirship of any deceased person it is necessary for an heir of the decedent, or a record claimant of some interest in the estate of the decedent to file a verified petition, setting out the name of the deceased, description of the estate of which the decedent died seized for which you are seeking a determination of heirship, the names and addresses of all known heirs and record claimants, and the extent of the interest claimed by such heir or heirs of record claimant if known.
- B. **Hearing.** After the petition has been filed, the judge shall make an order fixing a day for a hearing on the petition, not less than six nor more than ten weeks from the time of the order.

It will be necessary for all the heirs of the deceased person and record claimants to appear before the court at the time and place specified, and to submit to the court evidence establishing heirship.

The court will give notice of the hearing by service a copy of the notice on the known heirs and record claimants. Service on unknown heirs and unknown claimants will be made in the manner provided for the service of summons in civil actions in the district court for nonresident defendants. The hearing will be held on the date fixed by the court

V. Settlement

- A. **Closing Probate.** When all of the debts and expenses have been paid, all necessary tax returns have been filed and approved, and heirship has been determined, it is appropriate to close the probate proceedings. At this time, your attorney will prepare a Petition for Distribution which you will sign. The Petition will be filed with the court, set for hearing, and notice of the hearing given as was done for the hearing at which you were appointed Administrator of the estate.
- B. **Final Decree.** At that hearing, the court will enter a Final Decree of Distribution whereby you will be authorized to distribute all of the estate assets to the appropriate beneficiaries.
- C. **Discharge.** After all the estate assets have been distributed to the appropriate beneficiaries, you will be discharged as Administrator of the estate.

INTESTACY - DESCENT AND DISTRIBUTION

Okla. Tit. 84 § 213

Any person having title to any estate not otherwise limited by any antenuptial marriage contract dies without disposing of the estate by will, such estate descends and shall be distributed in the following manner:

1. If the decedent leaves a surviving spouse, the share of the estate passing to said spouse is:
 - i. If there is no surviving issue (i.e., lineal descendant like a child), parent, or sibling of decedent, the surviving spouse is entitled to the entire intestate estate.
 - ii. If there is no surviving issue, but the decedent is survived by a parent or sibling, the surviving spouse is entitled to all the property acquired by the joint industry of the spouses during their marriage, plus an undivided one-third interest in the remaining intestate estate.
 - iii. If there are surviving issue, all of whom are also issue of the surviving spouse, the surviving spouse is entitled to an undivided one-half interest in all the intestate property (however acquired).
 - iv. If there are surviving issue, one or more of whom are not also issue of the surviving spouse, the surviving spouse is entitled to an undivided one-half interest in the property acquired by the joint industry of the spouses during their marriage, plus an undivided equal part in the intestate estate not acquired jointly divided with each of decedent's living children and the lawful issue of any deceased child by right of representation
2. The share of the estate not passing to the surviving spouse or if there is no surviving spouse, the estate is to be distributed as follows:
 - i. Surviving children and issue of any deceased child by right of representation.
 - ii. Parent or parents equally.
 - iii. Parents' issue by right of representation.
 - iv. Grandparents or issue of grandparents. Half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent or to the issue of the paternal grandparents if both are deceased. Such issue take equally if they are all of the same degree of kinship to the decedent and, if of unequal degree those of more remote degree take by representation. The other half passes to the maternal relatives in the same manner. If there is no

surviving grandparent or issue of grandparent on either the paternal or maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

- v. Next of kin in equal degree.
- 3. If the decedent leaves no spouse, issue, parent, issue of parents, grandparent, issue of a grandparent, nor kindred, then the estate shall escheat to the state for the support of the common schools; and
- 4. For the purpose of this section, the phrase "by right of representation" means the estate is to be divided into as many equal shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one equal share and the equal share of each deceased person in the same degree being divided among his issue in the same manner. The word "issue" means lineal descendants.

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