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Opening the Probate Estate and Alternatives to Probate

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I. INTRODUCTION TO PROBATE

A. [2.1] General

Society has an interest in maintaining the orderly settlement of a deceased person's affairs and the peaceful transfer of the person's assets to the appropriate parties. Probate is the legal process by which the decedent's heirs are identified, the decedent's will (if any) is validated, and his or her estate is settled in court. In Illinois, for estates that go through probate, the probate court oversees in varying degrees the proper collection of the deceased person's assets; the proper payment of debts, taxes, and expenses owed before or because of the deceased person's death; and the distribution of the assets to heirs and/or designated beneficiaries.

There are other types of estates administered in court, namely guardianship estates, but this chapter does not address opening guardianship estates for minors or disabled adults. This chapter also does not address in any depth the many direct, nonprobate methods by which assets such as insurance, retirement benefits, trust assets, and joint tenancy or payable-on-death assets can change hands to clearly identified beneficiaries at death. The chapter discusses only the considerations and procedures for the first stages in handling a decedent's estate that may be subject to probate and alternatives to probate if the estate is small and simple enough that it can avoid probate.

Unlike many other unique areas or specialties in the practice of law that may never cross an attorney's desk, most, if not all, attorneys will be asked questions about or to directly handle a probate matter at some point in their career. While probate may appear to be simple or easy to handle, there are in fact many nuances and details to consider in order to ensure an orderly settlement of a deceased person's estate.

This chapter discusses the considerations and procedures for the initial stages in handling a "probate estate." The chapter includes a discussion of the steps to open the estate in court, and the differences between the administration of a "testate" and "intestate" estate. The chapter concludes by discussing notices, e-filing, claims, awards, elective shares, and will contests.

In this chapter, §§2.4 – 2.10 address the initial requirement of finding and filing all original wills and codicils, making the decision as to whether or not to probate the estate, and how to implement probate. Sections 2.11 – 2.16 address determining the personal representative and their powers before the estate is opened. Sections 2.17 – 2.20 detail the locations and types of probate. Section 2.21 provides an overview of testate and intestate procedure and practice considerations before filing the necessary court documents to open probate. Sections 2.22 – 2.31 provide instruction for opening a testate estate, including the necessary forms required, along with a step-by-step guide to electronic filing. Sections 2.32 – 2.39 discuss various issues arising immediately upon opening a probate matter, including claims against the estate, spousal and child awards, elective shares, presumptively void transfers, and will contests. Section 2.40 provides some final considerations relating to the administration of a newly opened estate. Sections 2.41 – 2.56 contain samples of some of the forms referenced throughout this chapter.

B. [2.2] Governing Law

Probate process and procedure in Illinois is governed by provisions contained in the Probate Act of 1975 (Probate Act), 755 ILCS 5/1-1, *et seq.*, as amended. While probate in Illinois is governed by state law, process and procedure applicable to the court process is county-specific and can vary. Most Illinois counties have their own local court rules as well, which must be considered along with the Probate Act. This chapter contains several references to Cook County and Lake County as primary examples, as well as information about the processes and forms in several other counties. Attorneys should consult the local rules in any county where probate proceedings may commence.

C. [2.3] Review of Basic Vocabulary

Before delving into the substance of opening estates, first review a few basic vocabulary terms used in this chapter.

- An “administrator” is the individual or corporation appointed by the court to serve in a fiduciary capacity as the personal representative (defined below) to administer the estate (defined below) of a decedent (defined below) who died without a will (defined below).
- An “administrator to collect” is the individual or corporation appointed by the court in a fiduciary capacity to collect the assets and debts of a decedent in a limited capacity and usually when authority to act on behalf of the estate is needed immediately (when, for example, there is a risk of waste to the estate or when there may be a delay in formal appointment of the personal representative).
- An “administrator with the will annexed” is the individual or corporation appointed by the court in a fiduciary capacity to serve as the personal representative for a decedent who died with a valid will in the instance when the executors named in the will refuse or are unable to act or when there is no executor named in the will.
- A “codicil” is a supplement or addition to a will, either to add, to remove, or to alter the provisions of the will. When admitted to probate, the codicil becomes a part of the will.
- A “decedent” is a person who has died.
- An “estate” is the collective real and personal property of a decedent, including the decedent’s debts and obligations.
- An “executor” is an individual or corporation that is named in a will and appointed by the court in a fiduciary capacity to serve as the personal representative of the estate and is guided by the will of the decedent.
- “Heirs” are those persons who are entitled to inherit a decedent’s estate by operation of law when the decedent dies.

- An “interested person” is one who has or represents a financial interest, property right, or fiduciary status at the time of reference which may be affected by the action, power, or proceeding involved, including without limitation an heir, legatee, creditor, person entitled to a spouse’s or child’s award, and the representative.
- “Intestate” means to die without a valid will.
- “Legatees” are those persons or entities designated under a will to receive the decedent’s property.
- “Letters of administration” refers to the document issued by the court that grants official authority to the administrator to serve as the personal representative of the estate.
- “Letters of administration to collect” refers to the document issued by the probate court that grants official authority to the administrator to collect assets and debts of the estate. Letters of administration to collect are temporary by design and will be revoked upon the issuance of letters of administration or letters testamentary.
- “Letters of office” is the generic term that encompasses both “letters of administration” and “letters testamentary” issued by the Illinois probate court. Letters of office grant authority to the personal representative to act on behalf of the estate.
- “Letters testamentary” refers to the document issued by the court that grants official authority to the executor to serve as the personal representative of the estate once a will is admitted to probate.
- A “personal representative” is an individual or corporation who acts on behalf of the decedent in connection with the administration of the estate. The personal representative is responsible for collecting assets; paying debts, expenses, and taxes; initiating and/or defending lawsuits on behalf of the estate; and ultimately distributing the estate. This chapter uses this term when discussing either an executor or an administrator.
- A “pourover will” is a will that directs the executor to distribute the estate to a decedent’s living trust for administration and distribution according to the trust agreement.
- The “residue” of an estate generally refers to the balance or remainder of an estate after all debts, expenses, and taxes are paid, and after certain specific distributions are made to legatees.
- “Residuary legatees” are those parties designated under the will to receive the residue of an estate.
- A “special administrator” is an individual appointed for the sole purpose of filing and pursuing a wrongful-death action pursuant to the Illinois Wrongful Death Act, 740 ILCS 180/0.01, *et seq.*, when no probate estate has been opened on behalf of the decedent; usually when the decedent dies without any other probate asset.

- “Testate” refers to a person who dies with a valid will.
- A “testator” is the author and signatory of a will.
- A “will” is a legal document in which a testator provides written instructions and statements of intent regarding the disposition of the testator’s estate after death. A will is not deemed valid unless it meets specific statutory requirements at the time of execution. Wills (including pourover wills) and codicils are all referred to herein as “wills.”

II. [2.4] IMMEDIATE ACTIONS FOLLOWING DEATH

After someone dies, the decedent’s family and/or loved ones will need to take various steps toward settling the estate as described in Chapter 1 of this handbook. One initial question to answer as quickly as practicable will be whether the estate will be required to engage in probate proceedings in court or whether there are feasible and desirable alternatives to formal probate. It may also be desirable to decide to go through formal probate even if it is not technically required.

A. [2.5] Finding and Filing the Original Will

The first step in determining whether probate will be required is to locate and file with the appropriate court all original wills and codicils executed by the decedent during life. The decedent’s files and records should be thoroughly searched and reviewed in this process.

When the original will is believed to be in the decedent’s safe-deposit box and no one else has access to it, the Safety Deposit Box Opening Act, 755 ILCS 15/0.01, *et seq.*, provides a procedure to examine the box to search for the will. 755 ILCS 15/1. Under that procedure, an individual may gain entry to the box in the presence of an employee of the bank or other depository by presenting a copy of the decedent’s death certificate, the key to the box, and a safety deposit box affidavit. The affidavit must state that the affiant is interested in the filing of the decedent’s will, that he or she believes the box contains the will, and that he or she is an “interested person.” *Id.* For these purposes, the statute defines an interested person as (1) any person who was a deputy on the box (*e.g.*, someone named on the box who does not have the key); (2) any person named as executor in a copy of a purported will of the decedent; (3) the spouse, adult descendant, parent, brother, or sister of the decedent; or (4) if the affidavit states that none of the persons described above is available to be present at the opening of the box, any other person who the bank or other depository, in its sole discretion, determines may have a legitimate interest in filing the decedent’s will or arrangements for burial. *Id.* If an original will is in the box, the bank should remove it and file it with the court. (Note that nothing else may be removed from the box under this procedure.)

The attorney can be helpful by encouraging the family to call prior attorneys or advisors to track down the will or information that may lead to the discovery of a will. By law, all such wills or codicils must be filed with the clerk of the county where the decedent resided at death within 30 days. 755 ILCS 5/6-1. Anyone in possession of an original will or codicil executed by the decedent must comply with this rule and ensure the filing is done, regardless of whether the will

is going to be probated. Likewise, the mere existence of a will is not determinative of the need for probate; however, locating the will and complying with filing requirements must be the first step.

An attorney must also comply with the filing requirement even if the attorney is not going to be engaged to perform legal services for the estate. Further, if an attorney is or becomes aware that a decedent left a valid will (*i.e.*, a will that was properly executed before death), the attorney should promptly notify the person or corporation named in the will to act as executor and provide them with a copy of the will. If any person willfully alters or destroys a will without the direction of the testator or willfully secretes it for the period of 30 days after death of the testator, that person could be sentenced as in cases of theft of property classified as a Class 3 felony by the law in effect at the date of the offense. 755 ILCS 5/6-1(b).

After it is filed, the clerk retains permanent custody of the original will (and it becomes a public document). 755 ILCS 5/6-7. Accordingly, before filing the will, the lawyer should be sure to photocopy the original will — including all codicils, which should be filed with the will. While it may be possible to send the original will to the clerk in the mail for filing, this is not advisable. Especially in larger counties, such as Cook County, it is best practice to present the original will in person to avoid the risk of the will being lost. In Cook County, the will can be filed with any local branch (including the Daley Center, Skokie, Rolling Meadows, Maywood, Bridgeview, and Markham) regardless of whether probate would commence in Chicago at the Daley Center (1st District). Additionally, the attorney (or whoever is physically present for the filing) should bring an extra copy of the will to the clerk's office and have the clerk file stamp or otherwise acknowledge receipt of the original will. Most counties provide some kind of receipt, which should be retained, but it is helpful to also have a stamped copy. When making copies of the will prior to filing, the attorney must be careful not to dismantle the original will by removing staples.

It is good practice for practitioners to request certified original copies of the will from the court at the time of filing, as those certified originals may be needed to administer the estate via a small estate affidavit (if probate is not needed) or for other reasons. In Cook County, these certified original copies can be obtained at any local branch. While there is no fee to file the original will, there is a fee to obtain certified copies of the will. Practitioners should check the county clerk's website or call for the specific fees to be prepared prior to visiting the clerk's office.

If a will is going to be presented for probate, it is important to check the local rules to determine how many days in advance a will must be filed prior to the initial court hearing. In Cook County, for example, the rules dictate that a will must be filed at least three court days before the hearing to admit it to probate. Cook County Circuit Court Rule 12.3(a). However, it typically takes a minimum of several weeks to secure a date on the Cook County court docket for the hearing to admit the will and open the estate, so as a practical matter, the three-day limitation is not a hardship.

PRACTICE POINTER

- ✓ Even if an original will and/or any codicil has been revoked or superseded, the mere existence of any original will and/or codicil necessitates its filing with the court. Each time a client signs a new will or codicil, the attorney should advise the client to locate any and all prior wills or other estate planning documents. Once the documents have been located, the attorney should advise the client regarding the destruction of the prior documents. In some cases, retaining the prior original will or codicil is advisable, such as when there are disinherited heirs or others who may challenge the instruments. But in most cases it is best to destroy the originals so they do not need to be filed with the court and made public at the decedent's death. Attorneys should review these options with the client and advise accordingly on a case-by-case basis.
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B. [2.6] Consideration of Probate Alternatives

As soon as the potential personal representative is identified, the attorney must consider with the client (generally the client is the potential personal representative) whether probate is necessary or, if unnecessary, whether it is nonetheless advisable. A preliminary inventory of the decedent's personal and real property, a review of the will (if any), and a meeting with the decedent's family members or loved ones along with or in addition to a meeting with the potential representative should help determine whether probate is necessary as well as whether formal probate or an alternative applies. The attorney should guide the family toward the most practical solution. In general, if the decedent's total estate exceeds \$100,000 in value, formal probate with the appointment by the court will be required. 755 ILCS 5/25-1. The discussion below addresses formal probate alternatives as well as the consideration of formal probate even when it is not required.

The probate alternatives can be implemented without the formal appointment by the court of a personal representative. An estate with assets totaling less than \$100,000 can either (1) be settled using a small estate affidavit to avoid the expense and hassle of court or (2) in limited circumstances, avail itself of the summary administration process in court. In the alternative, a bond in lieu of probate may be available to transfer some assets even if the assets exceed \$100,000 in value. However, the bond in lieu of probate is seldom used and often more expensive than opening the probate estate in court.

The bond in lieu of probate process has been used most often when the estate consists only of real estate. However, it is important to note that — in addition to the high cost associated with the bond — as of 2018, Cook County has put a significant wrinkle in the availability of this process.

In calculating the estimated value of the estate potentially subject to probate, remember that the following types of assets are excluded from the probate estate:

1. real estate titled between the decedent and any other individual as joint tenants with rights of survivorship;

2. real estate titled between the decedent and the decedent's spouse as tenants by the entirety;
3. personal assets titled jointly with a spouse or any other person as joint tenants with right of survivorship;
4. assets titled in the decedent's revocable living trust;
5. assets owned by the decedent at death that are subject to contract and payable to a valid designated beneficiary, including: (a) life insurance policies; (b) annuities; (c) retirement accounts (such as IRAs, 401(k) plans, and pensions with survivor's benefits);
6. payable-on-death, transfer-on-death, and Totten trust accounts (*In re Totten*, 179 N.Y. 112, 71 N.E. 748 (1904));
7. transfer on death residential real estate under 755 ILCS 27/1, *et seq.*; and
8. health or medical savings accounts.

Even if it is concluded that probate may be avoided, the attorney and the person who handles the estate without probate should be cautious. They should preserve a record of their various receipts and disbursements. They should maintain a file in very much the same manner as though the estate were being probated. In that way, they will have adequate information to support their actions if someone should later question any aspect of their activities or if someone else should institute probate proceedings.

C. [2.7] Small Estate Affidavit

Using a small estate affidavit to legally transfer assets from the decedent to the decedent's heirs and/or legatees is a common statutory option available that does not require that a representative of the estate be appointed. 755 ILCS 5/25-1. If the estate meets these requirements, the affidavit described in 755 ILCS 5/25-1 may be completed. The following must be included with the affidavit: (1) a copy of the death certificate; (2) a description of the assets and fair market value of each asset; and (3) a certified copy of the will (if any).

The affidavit is then presented to any person, corporation or financial institution in possession of the decedent's property, including anyone who is indebted to or holding personal estate of the decedent, controlling the right of access to the decedent's safe deposit box, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right. A significant amendment was made to the statute governing small estate affidavits that became effective January 1, 2015. 755 ILCS 5/25-1(b) provides a statutory form that attorneys can follow. Most counties have a form small estate affidavit on their website (some links are provided below); however, the form is not county-specific given that the basic premise of the small estate affidavit is to handle the estate without court involvement.

The important changes to note include:

1. the affiant is required to state his or her relationship to the decedent;
2. the expanded section (paragraph 7.5 of the statutory form), requires the affiant to list the decedent's (potential) unpaid debts and claims of the estate, classified as they would be in a formal probate matter, and the affiant's undertaking of liability for paying any such debts and claims prior to distributing assets;
3. the form must contain an indemnification by the affiance (enumerated as paragraph 10.5 of the form provided in the statute) in bold type and 14-point font, holding the affiant accountable to the decedent's creditors, heirs, legatees, and other persons or corporations who rely on the affidavit including reasonable attorneys' fees and expenses of recovery;
4. the affiant can receive the subject property as agent to make the payments and distributions;
5. the affiant can appoint an agent to obtain access to a safe deposit box and handle the distribution of personal property; and
6. the affidavit must be notarized.

Upon receiving the affidavit, the person in possession of the decedent's property is directed

1. to pay unpaid funeral expenses, if any;
2. to distribute the "award allowable" as specified in the affidavit to the surviving spouse, minor children, and adult dependent children, if any;
3. to distribute any debts due to the United States;
4. to pay money due employees of the decedent of not more than \$800 for each claimant for services rendered within four months prior to the decedent's death and expenses attending the last illness;
5. to distribute money and property received or held in trust by the decedent that cannot be identified or traced;
6. to distribute debts due to the State of Illinois and any county, township, city, town, village, or school district located within Illinois; and
7. to distribute "all other claims."

All valid claims against the decedent's estate must be paid by the affiant from the decedent's estate before any distribution is made to any heir or legatee. If the decedent's estate is insufficient to pay the claims in any one class, the claims in that class are paid pro rata. See 755 ILCS 5/25-1(b).

The small estate affidavit is convenient and involves little expense; however, it does not bar claims and does not, by its use or implementation, obviate the need for formal probate. Likewise, under the revised statute, the affiant must agree to take on significant responsibility or be subject to personal liability. As such, attorneys should proceed with caution when advising the use of a small estate affidavit. The small estate affidavit should only be employed once it is clear that the estate does not exceed \$100,000 and that there is no need (or desire) for formal probate. A small estate affidavit cannot be used to transfer real estate. Additionally, a small estate affidavit should not be used when (1) there are letters of office outstanding; (2) there are unpaid creditors (including funeral expenses); (3) the will is of questionable validity, might be contested, or is ambiguous; (4) the heirship may be disputed; (5) probate proceedings have already been initiated; or (6) all estate assets are not known.

A sample Cook County small estate affidavit can be found at www.cookcountyclerkofcourt.org/Forms/pdf_files/CCPN608.pdf (case sensitive), and can be used in most counties. Lake County also publishes a form that can be found at www.lakecountycircuitclerk.org/docs/default-source/probate/small-estate-affidavit.pdf?sfvrsn=2. DuPage County has a form available by searching for Form 3764 under Civil Cases (choose “affidavit” as a search term) at www.dupageco.org/CourtClerk/CourtForms (case sensitive). Will County has a form as part of its Decedent Estate Packet at www.circuitclerkofwillcounty.com/Court-Forms/decedent-estate-packet (case sensitive). Copies of these forms are provided in §§2.41 – 2.45 below.

D. [2.8] Summary Administration

A potential option for administering an estate with a value that is less than \$100,000 is summary administration. 755 ILCS 5/9-8, 5/9-9. Summary administration is a modified probate court process that permits the payment of claims and distribution of the decedent’s personal estate to the persons entitled to it, without the issuance of letters of office to a representative and without the filing of an inventory or accounting. While this procedure sounds enticing, it is rarely an available option due to its limited application to most estates.

Illinois law provides for a simplified probate through a petition for summary administration (pursuant to 755 ILCS 5/9-8) when all the following are true:

1. There is no unpaid claim against the estate.
2. No tax will be due the United States or to the State of Illinois.
3. No one is entitled to a surviving spouse or child award.
4. All heirs and legatees of the decedent have consented in writing to distribution of the estate on summary administration (this is difficult to achieve in many situations).
5. The petitioner has published a notice informing all persons of the death of the decedent and of the filing of the petition for distribution of the estate on summary administration (30-days’ notice is required).

6. The value of real and personal property subject to administration in Illinois does not exceed \$100,000.

PRACTICE POINTER

- ✓ The Secretary of State also publishes a small estate affidavit form that is helpful for the transfer of vehicles titled in Illinois. The link for the Secretary of State form is https://www.cyberdriveillinois.com/publications/pdf_publications/rtopr31.pdf. Interestingly, this form is reproduced on Madison County's website as well as other legal sites as a "free" form. It should be noted that if used to transfer assets other than vehicles, the attorney should be careful to modify paragraph 6 of the form, as it is specifically designed to transfer vehicles.
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At the hearing on the petition for summary administration, heirship will be determined, and the will, if any, will be admitted to the court. Upon approval of the petition, the court directs the payment of claims and the distribution of the decedent's personal estate. The court cannot direct the transfer of title to real estate in summary administration proceedings. There are many other problems associated with summary administration including (1) claims against the estate are not barred after the customary six-month period applicable to formal administration and may be asserted up to two years after the decedent's death (see 755 ILCS 5/18-12(b)); (2) compliance with the notice and bond requirements can cause the estate to incur significant costs; and (3) potential for unnecessary delay caused by an inability to promptly itemize all estate assets (which is necessary to obtain an order of summary administration).

E. [2.9] Bond in Lieu of Probate

Using a bond in lieu of probate may be particularly appealing for transfers of real estate. If an estate contains less than \$100,000 in personal property and has real property, an option to transfer the real property is a bond in lieu of probate. Illinois common law provides that title in the decedent's real estate is deemed to vest in the heirs at death (This sounds like it would obviate the need for probate; however, that is not always the case.). *In re Estate of Stokes*, 225 Ill.App.3d 834, 587 N.E.2d 564, 167 Ill.Dec. 295 (4th Dist. 1992). Accordingly, title companies often facilitate the transfer of real estate (even if letters of office have not been issued) if all the heirs or recipient legatees sign the deed and agree that the title remains subject to the claims of creditors for the duration of the two-year claims bar statute. Usually an affidavit of heirship is prepared and recorded with the deed. The current bond costs published by Chicago Title Insurance Company are two percent of the selling price of the property for the first year after death and one percent during the second year after death (the second year is less because the risk of claims being filed decreases).

If the bond is acceptable, the cost likely will be between two and four percent of the value of the asset involved. It is not refundable at the end of the claims period. Also, the transfer agent or party in possession of the assets will require an affidavit of heirship, together with a certified copy of the will, if any, to demonstrate that the persons requesting transfer are entitled to the property. If bank accounts are involved, each separate account will require a separate bond.

Similarly, each transfer agent of securities will require a separate bond. Thus, the more assets involved, the greater the bond premiums. At some point, formal probate may be the more cost-efficient route. Any lawyer contemplating the use of this procedure should evaluate carefully the benefits of a bond in lieu of probate versus probate administration.

However, in practice and as previously stated, the bond in lieu of probate is infrequently used (and then only with respect to real estate), because, with respect to personal property, a small estate affidavit is far more efficient. Additionally, the holder of property is under no obligation to accept a bond (unlike a small estate affidavit with respect to personal property.) The bond only protects the person who relies on the bond. It does not protect the heirs who receive the property as a matter of law (with respect to real estate) or those heirs or legatees who otherwise lay claim to personal property.

In May 2018, the Cook County Recorder of Deeds began to refuse to record deeds signed by heirs and affidavits of heirship without a court order. For Cook County properties, title companies in turn stopped insuring a transfer of title based on affidavits of death and heirship, deeds from the heirs and devisees, and indemnification against claims against the estate through a bond in lieu of probate. It became necessary to seek approval from the court of an affidavit of heirship via a modified petition generally known as a “Petition for Order Declaring Heirship.” A short petition along with an affidavit of heirship is filed with the court. The affidavit spells out who the legal heirs to the property are, what the property is, and who gains ownership of the property. When presenting this petition, it is advisable to obtain waivers from the appropriate interested parties in order to avoid delays due to potential notice requirements. Once approved by the court, title companies will accept an affidavit of heirship instead of a bond in lieu of probate to issue their policy of title commitment. As of the date of publication of this chapter, it remains unsettled as to whether Cook County’s recent “policy” will remain in force. This is an issue that attorneys who practice in Cook County should monitor.

F. [2.10] Determining When To Engage in Probate Even if Not Required

Even if formal probate can be avoided or is not legally necessary, there are cases when it serves the best interests of the estate to proceed with the formal court process. Estate planning practitioners typically advise clients to structure a plan that avoids probate. Probate is viewed as undesirable because it is public, can be costly, delays the settlement of the estate, and provides a forum that may attract creditors or facilitate claims. Nonetheless, on occasion, it is best to engage in probate “voluntarily.” A primary reason to engage voluntarily in probate is to avail the estate of a shortened statute of limitations for creditor claims and will or trust contests from two years to six months. This same limitations period applies to a separate action for tortious interference with an expectancy (such action can otherwise be initiated several years after a decedent’s death in certain circumstances). *Bjork v. O’Meara*, 2013 IL 114044, 986 N.E.2d 626, 369 Ill.Dec. 313. Another reason to volunteer, is the case in which a decedent has exercised powers of appointment in a valid will and the fiduciary or custodian holding the property subject to the power of appointment then requests a court order to establish the will’s validity.

In general, the decision regarding whether to probate, when not otherwise legally required, must not be taken lightly. The attorney should advise or assist the personal representative to make reasonable inquiry about whether the decedent may have unidentified or potential creditors (*e.g.*, because the decedent's occupation or activities suggest risk) or whether anyone may wish to object to the decedent's will or revocable trust (*e.g.*, in the case of known family conflicts).

III. INITIAL STEPS FOR FORMAL PROBATE

A. [2.11] Identifying the Personal Representative of the Estate

“Personal representative” is a generic term that signifies the person who has authority to act on behalf of the estate. A personal representative can be an executor, an administrator, or even a trustee (however, this chapter does not address the trustee as the personal representative).

The personal representative is responsible for gathering the estate assets and resolving outstanding obligations of the decedent. The personal representative may even be responsible for fulfilling the decedent's last wishes with respect to burial instructions, funeral arrangements, or the disposition of the decedent's remains. Ultimately, the personal representative will oversee making final distributions of the estate to the proper heirs or beneficiaries.

The Probate Act limits who may act as personal representative in Illinois; a personal representative must be 18 years old, be a resident of the United States, be of sound mind, not be adjudicated as a disabled person as defined in the Probate Act, and not have been convicted of a felony. 755 ILCS 5/6-13(a). Note that a personal representative need not be a resident of Illinois, but in the case of a nonresident personal representative, the probate court in its discretion may require a bond in such amount and with such surety as the court determines, notwithstanding any contrary provision of the will. 755 ILCS 5/6-13(b). This rarely occurs when bond and surety are waived by the terms of the will.

B. [2.12] Power of Executor To Act Before Estate Is Opened

Prior to issuance of letters testamentary, the executor named in a will has some initial powers over the estate to facilitate and oversee immediate issues, especially if no one else has been designated to do so. These powers may include (1) carrying out any gift of the decedent's body or any part thereof for medical or research purposes, (2) the burial of the decedent, (3) paying necessary funeral charges, and (4) preserving the estate. 755 ILCS 5/6-14. For an in-depth discussion of items (1) and (2), see Chapter 1 of this handbook.

If the will is not admitted to probate, the designated executor is not liable as an executor, except for the executor's refusal to deliver the estate to the person authorized by law to receive it or for waste or misapplication of the estate. 755 ILCS 5/6-14.

C. [2.13] Executor as Personal Representative

Once an individual or corporation has knowledge of being named as executor of the will, that named party has 30 days under the Probate Act to commence a proceeding to present the will to

court for admission to probate or to declare refusal to act as executor. 755 ILCS 5/6-3(a). Failing to do so may result in the disqualification of the person from acting as executor. *In re Estate of Sorgatz*, 2014 ILL App (1st) 13077-U (finding that failure to admit will for probate within 30 days could supply court with legitimate basis to allow another to serve as executor); *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, ¶24, 36 N.E.3d 266, 394 Ill.Dec. 333 (holding that prospective executor can be disqualified from ever serving as executor because he or she failed to request that will be admitted to probate within 30 days of filing it with court).

It is important to note that a named executor has no legal or other obligation to accept the role and be appointed by the court. The attorney should advise the potential executor of their right to decline to act. The role comes with great responsibility and liability and in some cases the cost of administering an estate may exceed the value. If a party who is named as executor does not wish to act, that party can decline by executing a declination of office that will be filed with the court. A form declination of office can generally be found on the county clerk's website. If a county does not have its own form, the attorney can look to another county's form for guidance. In Cook County, the form can be found at www.cookcountyclerkofcourt.org/Forms/pdf_files/CCPN309.pdf (case sensitive). In Lake County, www.lakecountycircuitclerk.org/docs/default-source/probate/declination-of-office.pdf?sfvrsn=2 (case sensitive), is the proper form to use.

When 30 days have elapsed since the death of the testator and no petition has been filed to admit his or her will to probate, the court may proceed to probate the will without the filing of a petition, unless it appears to the court that probate is unnecessary and failure to probate it will not prejudice the rights of any interested person. Notice of the hearing on the admission of the will must be given to the interested persons as the court directs. 755 ILCS 5/6-3(b).

Sometimes a named executor may be willing to act but unable or otherwise not qualified for various reasons. However, if the person later becomes able and qualified, the named executor still can act. If a person named as executor in a will is not qualified to act at the time of admission of the will to probate but thereafter becomes qualified and files a petition for the issuances of letters, takes oath, and gives bond as executor, the court may issue letters testamentary to him or her as coexecutor with the executor who has qualified; if no executor has qualified, the court may issue letters testamentary to him or her and revoke the letters of administration with the will annexed. 755 ILCS 5/6-13(b).

D. [2.14] Administrator as Personal Representative

If a person dies without a will, or "intestate," an interested person can nominate an administrator by filing a petition with the court to appoint an administrator. The court will appoint an "administrator with the will annexed" when a person dies with a will but either no executor is named in the will or the executors named cannot or will not act. 755 ILCS 5/9-3. The Illinois Probate Act provides a list of preferences regarding who can nominate an administrator. *Id.* The order of preference for nominating an administrator is as follows: (1) the surviving spouse or any person nominated by the surviving spouse; (2) legatees or any person nominated by them, with preference to legatees who are children; (3) the children or any person nominated by them; (4) the grandchildren or any person nominated by them; (5) the parents or any person nominated by

them; (6) the siblings or any person nominated by them; (7) the nearest kindred or any person nominated by them; and (8) the representative of the estate. If none of these individuals step forward to open the estate, a public administrator or anyone with a claim against the estate can file the petition to initiate probate.

Only a person qualified to act as administrator under The Probate Act may nominate an administrator (who may not be qualified to nominate). An exception is provided, however, for the guardian of the estate of a ward (either a minor or disabled adult). The guardian can nominate on behalf of the ward and can nominate someone who would otherwise not be qualified to act. 755 ILCS 5/9-3. A person who has been removed as representative loses the right to name a successor.

If proper notice is provided to the interested parties, and to those with preference to nominate, and no objections are filed, the court will generally appoint the person nominated in the petition by the interested person (and often they are one and the same). If competing or “cross” petitions to nominate are filed, and the parties cannot agree, the court will hold a hearing to determine whom to appoint. Although permitted by law, in practice the courts do not favor the appointment of co-administrators. This is for obvious reasons, such as avoiding potential disagreements between the administrators and causing waste or delay of the estate.

Administering an estate is a significant amount of work and responsibility, so the nomination should not be taken lightly. The nominee must be trustworthy, responsible, and — just as important — willing to take on the job and carry out the duties in a lawful manner. Like advice given to clients on naming an executor when drafting a will, the attorney should advise the potential nominators to consider nominating an individual whose schedule and other commitments can afford to take on the task. Other considerations can include whether the nominee has physical proximity to the decedent’s belongings and financial records. Someone who is well-organized and has a legal, accounting, or financial background could also be a good candidate. An administrator is entitled to reasonable compensation under the Probate Act. 755 ILCS 5/27-1.

If the size of the estate warrants it, or if the administration appears particularly troublesome due to negative family/beneficiary dynamics, then nominating a professional or corporate fiduciary may be a better option to promote efficiency in the administration of the estate, including financial efficiency. If a creditor opens the estate, they must find a party who is willing to administer the estate. If the public administrator’s office is notified by the coroner, hospital nursing center, or attorney of a decedent who apparently has no known heirs, the public administrator can file a petition for letters of office and seek authorization to make burial arrangements. 755 ILCS 5/13-4.

E. [2.15] Administrator To Collect as Personal Representative

Sometimes the process to appoint formally the personal representative presents obstacles (such as locating the will, risk of theft, or tracking down family members). Likewise, certain circumstances may warrant the need for immediate action on behalf of an estate (such as a pending business transaction, closing, or lawsuit). These situations may warrant a petition to the

court to appoint an “administrator to collect.” An administrator to collect has a limited role both in time and scope and can be appointed in testate or intestate estates. The job of the administrator to collect is to be able to transact on behalf of the estate quickly (pending gathering of additional information or location of a will). The procedure for appointment of an administrator to collect is set forth in the Probate Act. 755 ILCS 5/10-1, 5/10-2.

The administrator to collect may collect, sue for, and, by leave of court, conserve the decedent’s assets. 755 ILCS 5/10-4. The administrator to collect’s powers terminate upon issuance of the letters of office to the executor or administrator of the estate. 755 ILCS 5/10-5. Once the representative has been appointed, the administrator to collect must account to and deliver all estate assets to the personal representative of the estate. As a practical matter, the administrator to collect and the ultimate estate representative are often the same individual. A person desiring to have letters of administration to collect issued for an estate must file a petition in the proper county, stating the name and place of residence of the decedent at the time of his or her death, the time and place of the decedent’s death, the approximate value of the decedent’s real and personal estate in Illinois and the amount of anticipated gross annual income from real estate in Illinois, the name and address of the person proposed as administrator to collect, and the reason for issuance of letters. 755 ILCS 5/10-2.

The selection of an administrator to collect for the estate of a decedent is in the discretion of the court, giving due consideration to the person named as executor in the will or, if there is no will or if no executor is named, to the order of preference laid out in §2.7 above. 755 ILCS 5/10-1(b).

PRACTICE POINTER

- ✓ Even when no administrator to collect is appointed, anyone in possession of the decedent’s belongings or other assets should be instructed to take reasonable measures to protect those assets and avoid the lapse of any property or casualty insurance policies protecting those assets. Additionally, in situations where seeking appointment of an administrator to collect is not clear, the practitioner can prepare both a Petition to Appoint an Administrator to Collect and a Petition for Administrator (or for Probate of Will and Letters Testamentary) at the outset in order to save valuable time and to protect both the estate and the fiduciary.
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F. [2.16] Special Administrators and Wrongful-Death Actions

If a decedent dies as a result of an accident, injury, or negligence, the Illinois Wrongful Death Act provides that a “special administrator” may be appointed for the sole purpose of pursuing wrongful-death claims. 740 ILCS 180/2.1. A special administrator cannot be appointed if letters of office are issued by the probate court. Likewise, a special administrator cannot pursue claims for survival actions; those claims must be pursued by a personal representative appointed by the probate court. The Joint Order is available on the Cook County Clerk’s website at http://www.cookcountycourt.org/Portals/0/Law%20Division/Settlement%20Memo_Final%209.5.14.pdf (case sensitive).

IV. [2.17] LOCATION AND TYPES OF PROBATE

As previously discussed, in general, all estates that include over \$100,000 in assets and/or real estate that cannot be settled using a small estate affidavit, bond in lieu of probate, or summary administration must undergo formal probate administration in court.

A. [2.18] Where To Commence Probate When Illinois Is the Domicile

Illinois courts have jurisdiction over a decedent's estate if the decedent either owned assets in the state at the time of death or was domiciled in Illinois. The term "domicile" was defined and discussed in *In re Estate of Elson*, 120 Ill.App.3d 649, 458 N.E.2d 637, 76 Ill.Dec. 237 (2d Dist. 1983).

"Domicile" has been defined as the place where a person has her true, permanent home to which she intends to return whenever she is absent. . . . Domicile is a continuing thing, and from the moment a person is born she must, at all times, have a domicile. . . . A person can have only one domicile; once a domicile is established, it continues until a new one is actually acquired. [Citations omitted.] 458 N.E.2d at 641.

The court in *Elson* went on to state that the terms "domicile" and "residence" are used interchangeably under the Probate Act. Furthermore, an Illinois litigation interest in the decedent's estate constitutes an asset of the estate sufficient to confer jurisdiction on the Illinois courts. See *In re Estate of Zorn*, 118 Ill.App.3d 988, 455 N.E.2d 864, 74 Ill.Dec. 435 (4th Dist. 1983).

If Illinois has jurisdiction, it is important at the outset to identify the proper county in which the probate proceeding should be commenced. Normally, probate is initiated in the county where the decedent had a known place of residence. If the decedent did not have a residence in Illinois, then probate should be commenced in the county in which the greater part of the decedent's real estate is located or, if none, where most of his or her personal estate is located at the time of death. 755 ILCS 5/5-1. The situs of tangible personal estate is where it is located, and the situs of intangible personal estate is (1) where the instrument evidencing a share, interest, debt, obligation, stock or chose in action is located or (2) where the debtor resides if there is no instrument evidencing the share, interest, debt, obligation, stock or chose in action in Illinois. 755 ILCS 5/5-2.

B. [2.19] Ancillary Administration

Ancillary administration is required when a decedent dies owning real property in a state other than the decedent's domicile. Ancillary administration is discussed in greater detail in Chapter 10 of this handbook. Basically, under Illinois law, when an Illinois domiciled decedent has real estate outside of Illinois, the law of the situs of the land will govern all instruments affecting the title to the land. *Sternberg v. St. Louis Union Trust Co.*, 394 Ill. 452, 68 N.E.2d 892, 169 A.L.R. 545 (1946). A will does not pass title to real estate until it is admitted to probate (in the appropriate jurisdiction). 755 ILCS 5/4-13. The Probate Act states that the procedure for the

admission to probate of a domestic (or Illinois) will governs the procedure for the admission to probate of a foreign (or non-Illinois) will. 755 ILCS 5/7-2. If a non-Illinois decedent has a creditor in Illinois, then Illinois law governs the satisfaction of the creditor's claim, which can be attached to the real estate as part of the ancillary estate. Therefore, the attorney should follow normal probate procedures to administer the ancillary probate and satisfy the creditor's claims.

The only procedure that differs between ancillary probate and domestic probate is the method of proving the foreign (non-Illinois) will. A foreign will can be proven in Illinois by a copy or as an original will. To prove a copy, evidence of an authenticated copy of the will and the probate of that will is the only evidence needed. 755 ILCS 5/7-3. Section 7-3 of the Probate Act provides a shortcut to the normal procedure of proving a will if the will has been admitted to probate in another state. Otherwise, the same procedure for proving a will in domestic probate will be necessary for original proof of a foreign will, unless the foreign will was executed in accordance with laws other than that of Illinois. 755 ILCS 5/7-4. If a non-Illinois domiciled decedent owns real estate in Illinois, that decedent's estate would likely need to engage in ancillary probate here in Illinois. In this situation, the will of a nonresident decedent should be admitted (or if no will then pursuant to intestate administration) in the county where the majority of the real estate is located. 755 ILCS 5/5-1.

C. [2.20] Supervised vs. Independent Administration

It is important for an attorney to understand the difference between "independent" and "supervised" administration. Most, if not the majority, of estates today are administered under independent administration, pursuant to 755 ILCS 5/28-1. An independently administered estate creates the potential that the executor will only have to appear in court twice — once at the opening of the probate estate, in order to be appointed executor, and once at the closing of the estate, in order to file his or her report with the court, close the case, and be discharged as executor.

Essentially, independent administration means that unless there is some sort of dispute, a request for a hearing, or an additional surety bond is necessary, the court generally does not get involved in administration issues between the opening and closing of the estate. This is generally viewed as positive for heirs and legatees as well as the personal representative. However, if suspicions arise on behalf of a beneficiary, or as added protection for a personal representative, it is sometimes advisable to request supervised administration at the outset of the administration process. Supervised administration generally requires the attorney to obtain court approval to take many actions (including, but not limited to, selling or leasing real estate, selling personal property, and making interim distributions). Additionally, pursuant to the provisions of the Probate Act applicable to an estate in supervised administration, a supervised representative is required to file the estate's inventory, accounting, and other sensitive estate information with the court, rather than providing only privately to interested parties. 755 ILCS 5/28-4(b).

There is also the option to seek termination of independent administration (in favor of supervised administration) at some time after letters of office for independent administration are granted but prior to the closing of the estate. As a general rule, this option may be reviewed by the attorney with the client but needs to be reviewed with the client in all cases if complications with the estate arise or there is risk to the estate.

Generally, supervised administration will be ordered by the court in response to a petition by an interested person. This can occur at any point during the administration. The statute lays out criteria for the court to order supervised administration if (1) there is no will and any heir demands supervised administration at any time; (2) there is a will but the will does not direct independent administration and any heir demands supervised administration at any time; (3) there is a will that expressly directs independent administration and the judge orders supervised administration after a showing of “good cause”; or (4) the court orders it to protect the interest of minors or disabled individuals. 755 ILCS 5/28-2(b).

The procedures for opening an estate, validating the will (if any), proving heirship, securing appointment of the representative, giving notice, and undergoing court proceedings are basically the same for independent and supervised administration. Below are some examples of ways that the two types of formal probate differ:

1. An order appointing the personal representative will specify whether the administration shall operate as “independent” or “supervised.” 755 ILCS 5/28-2(a). Similarly, the letters of office will provide the distinction.

2. In independent administration, it may be necessary to appoint a “personal fiduciary” to represent any minor or disabled person who has an interest in the estate. See 755 ILCS 5/28-2, 5/28-3. As a general rule, this should always be done whenever a minor or disabled adult is an interested person.

3. After the representative is appointed under independent administration, notice must be sent to each interested party who has not waived notice advising that party of the right to terminate independent administration (in addition to the normal notices required in supervised administration). See 755 ILCS 5/6-10. This notice must include a form of petition that can be used for this purpose. 755 ILCS 5/28-2(a). The Probate Act defines an “interested person” as one who has or represents a financial interest, property right, or fiduciary status that may be affected by the proceeding involved. 755 ILCS 5/1-2.11. Interested persons include heirs, legatees, creditors, and persons entitled to a spouse’s or child’s award. *Id.*

4. If ever during a court proceeding the independent representative petitions the court for instructions as to the exercise of any discretionary power, he or she renounces his or her own discretion and must substitute the discretion of the court for his or her own. 755 ILCS 5/28-5.

5. The independent representative is not required to file an inventory with the probate court. However, a copy of the inventory must be sent to each interested person at least 30 days before filing the final report to close the estate and, prior to that time, upon any interested person’s written request. 755 ILCS 5/28-6(a). Note that the interested persons may well change during the administration process, so the parties entitled to notice at the outset, may no longer be entitled to any notice or information when it is time to close the estate. An independent administrator who has been required to file a surety bond also must send a copy of the inventory to the surety company within 90 days after appointment. 755 ILCS 5/28-6(b).

6. In independent administration, minimum statutory spouse's and child's awards, if not waived or barred, may be paid without court approval unless the total value of all such awards exceeds five percent of the gross value of the estate, in which case the minimum statutory award may still be paid without approval. 755 ILCS 5/28-7(a). If the spouse or child seeks additional amounts, a petition must be filed and approved by the court, even under independent administration. The independent representative shall comply with the notice requirements for spouse and child awards under 755 ILCS 5/15-3(a), and anyone with a right to selection of goods and chattels as payment for their award, under 755 ILCS 5/15-4, may file his or her selection with the independent representative within 30 days after being notified in writing of the allowance of the award.

7. The independent representative's administrative powers (as listed in the Probate Act and additionally in the governing will instrument, if any) are exercisable without court approval. 755 ILCS 5/28-8. These powers include the power to sell real estate without court approval.

8. The independent representative is accountable to all interested persons for the representative's actions and must provide to each such party formal or informal accountings to disclose all receipts of and disbursements from the estate. However, that representative need not present a formal accounting in court unless an interested person requests such formal accounting. 755 ILCS 5/28-11(a).

9. An independent representative seeking discharge as representative shall mail to interested persons and file with the court a verified report stating that the conditions laid out in 755 ILCS 5/28-11(b) have been satisfied. Before the estate can be closed, the independent representative must give notice to any interested persons who have not waived notice. 755 ILCS 5/28-11(c) through 5/28-11(e).

Supervised administration can also be changed to (or changed back to) independent administration. 755 ILCS 5/28-2(a). For example, it is common for the representative of a supervised estate to request conversion of the estate to independent administration for the purpose of closing the estate, thereby avoiding the need to file a final accounting with the court. This is allowed by statute. Specific forms are provided in Cook County for this purpose and may be available in other counties as well. See the individual county websites for this information.

V. OPENING THE ESTATE IN COURT

A. [2.21] Overview and Practice Considerations

The two most common probate procedures are (1) opening a testate estate and (2) an intestate estate.

Testate administration. The procedures outlined below pertain to testate administration, which applies when the decedent died with a valid will. The main goal of testate administration is to carry out the decedent's wishes as proscribed in his or her will. The executor (named in the will or otherwise) seeks letters testamentary from the court that enable the executor to collect

assets, pay administration expenses, and ultimately to distribute the estate to the legatees named in the will. It is important to note that even if the decedent died with a will, if the will cannot be properly admitted to probate and, therefore, deemed “valid,” then the decedent’s estate must proceed as “intestate.” Similarly, if any portion of the decedent’s estate is not bequeathed in the will (such as in the event of a failed gift and no residuary clause), it shall be distributed according to the rules of descent and distribution. 755 ILCS 5/4-14.

Intestate administration. The procedures outlined in §2.25 below pertain to intestate administration, which applies when the decedent dies without a valid will. In such instance, the decedent’s estate will be distributed to the decedent’s lawful heirs in such proportions as provided in the rules of descent and distribution. 755 ILCS 5/2-1. As described below, for both testate and intestate administration, the probate procedures vary slightly depending on whether the estate is undergoing independent or supervised administration.

Probate Act and use of standard forms. The Probate Act lays out the process for successfully administering a probate estate. The content necessary to satisfy most requirements can be found in preprinted and/or PDF fillable probate court forms that are produced in most Illinois counties and available on the website. It is advisable to use the forms of the county where probate is taking place for efficient practice through that court. Sections 2.21 – 2.31 below cover most, if not all, of the required forms for each proceeding and direct the practitioner to a predrafted form if one is available. However, because probate practice is a highly specialized practice, probate judges are often impatient with lawyers appearing before them who have not done their homework properly or are otherwise ill-prepared for the hearing to open the estate. Accordingly, practitioners are urged to review the Probate Act and applicable local rules carefully before commencing a probate proceeding to make sure the proper procedure is being followed and that all necessary forms have been completed. If a petitioner cannot find local forms, it can be helpful to use the content of another county’s forms. Additional forms may also be required by local court rules.

Finding forms on county circuit court’s website. Several courts across Illinois have the necessary forms located on the clerk of the circuit court’s website for that county. Namely, in Cook, Lake, DuPage, Will, McHenry, and Kane Counties preprinted fillable forms are available for several, if not all, required probate forms and should be used whenever possible. In Will County, practitioners can visit the clerk of court’s website and find a “Decedent Estate Packet” that contains most of the forms necessary for opening a decedent’s estate. Similarly, in counties like Cook and DuPage, these court forms are assigned numbers that are referenced throughout this chapter. In Lake and McHenry Counties the required forms are grouped by division. A practitioner needing a certain probate form can easily find what they need in one place. It is important to check with the clerk of the local circuit court or on that circuit court’s website to determine whether preprinted forms are available.

Electronic filing. It is important to note is that all counties in Illinois have moved to *mandatory* electronic filing (e-filing) for probate matters. A step-by-step guide to e-filing using the Odyssey eFileIL provider, as well as common issues that arise, is found in §2.26 below.

Final considerations and forms. Section 2.40 below provides some final thoughts about next steps, and §§2.41 – 2.56 below provide some of the sample forms referenced in this chapter.

PRACTICE POINTER

- ✓ If an attorney takes on the administration of an estate in a county where he or she is not familiar with the local court process and procedure, it is advisable to seek guidance from a local attorney in the area because probate is county specific. Attending a court hearing without the proper forms can cause delay and increased expense for an estate. Most probate practitioners are willing to help colleagues, or assistance can be sought through various listservs (*e.g.*, the ISBA Trust and Estates Section Council listserv).
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B. [2.22] Opening a Testate Estate

The steps for opening a testate estate are as follows:

File the will. As previously discussed in this chapter, before filing any document to open the probate case, you must file all original wills and codicils with the clerk of the circuit court where probate is commenced. This cannot be done through e-filing, as the original will is required. See 755 ILCS 5/6-1. To emphasize earlier advice, it is best practice to file the will in person, and it is a good idea also to order and obtain a certified copy when the original is filed. The risk of human error and loss of the will, both which can cause delay or, worse, a failed estate distribution or litigation, is drastically reduced if the will is hand delivered. See §2.4 above for additional information about filing wills.

Prepare the forms. After the will is filed, in order to get the executor appointed, the attorney must prepare the documents needed to open the estate and procure proper signatures from the proposed executor and/or other parties. If the clerk's office in the circuit court where counsel is filing does not have preprinted fillable forms or a form is not available and counsel is drafting from scratch, check the local rules for any formatting requirements. The responsible attorney's name, firm name, address, telephone number, attorney or firm registration number, and name of the party represented must be included in the lower left-hand portion of the last page of each document.

Calendar dates, send notice, and file waivers of notice (if applicable). After the will has been accepted to probate and letters of office have been issued, all relevant dates should be calendared. Probate requires compliance with several deadlines, and failure to meet any one of them can have significant consequences for the executor.

Below is a checklist of the necessary steps and required forms, which will be covered in §§2.22 – 2.31 below:

Prepare and file before the first court date:

- File the original will (required)
- File Cover Sheet or Attorney Certification signed by attorney (if applicable where filing)

- File Petition for Probate of Will and Letters Testamentary signed by the petitioner and obtain a court date (required)
- File the Affidavit of Heirship with notarized signature of the affiant (required)
- File the Oath and Bond of Representative (Surety or No Surety) (notarized signature required):
- File Acceptance of Office (Corporation) (can be filed before or after initial court date if applicable)
- File Affidavit of Copy of Will (if applicable)
- File Designation of Resident Agent (can be filed before or after initial court date if applicable)
- File Waivers of Notice (if applicable and can be obtained)
- File Declinations of Office (if applicable)
- File Acceptance of Office as Personal Fiduciary (if applicable)

Prepare and bring to first court date:

- Order Admitting Will to Probate and Appointing Representative
- Order Declaring Heirship

Oath of Office and Bond (Surety or No Surety) [NOTE: Some forms require the judge's approval before filing. In Cook County, if the attorney is obtaining a surety from the 12th floor before court, counsel may not be able to file the Oath and Bond prior to the court hearing. The attorney can submit the certified Oath and Bond, signed by the petitioner and stamped by the surety company, to the judge at the first court date.]

After the first court date opening the estate: [NOTE: Specific timeframes for completing these required tasks, depending on testate or intestate administration, are covered in §§2.23 and 2.25 below]

- Order and obtain Letters of Office (can often be done same day)
- Calendar all applicable dates and deadlines (primarily for sending notice)
- Send Notice to all Heirs and Legatees (if no waivers obtained)
- Publish Claims Notice
- File Proof of Mailing and Publication when notice requirements are met (this may be done more than once)

C. [2.23] Documents and Time Frames for Testate Administration

In most counties, the following is required to open a probate estate:

Cover Sheet/Certificate of Attorney. Historically, in Cook County, the Probate Division Cover Sheet (CCP 0199) was required to be filed at the time the original petition was filed. However, with e-filing, some providers like Odyssey eFileIL do not prompt the filer to file a cover sheet before filing the petition. Some practitioners still included the cover sheet as part of the petition, but others have omitted it entirely. It is purely clerical and need not be presented at the initial hearing. In Lake County, the “cover sheet,” called the Certificate of Attorney — Civil Division, must be signed by the counsel of record and filed with the petition.

Petition for Probate of Will and Letters of Office/Testamentary. The original signed petition for probate of will and for letters of office/testamentary is e-filed with the clerk of the court, at which time a case number and judge is assigned and the hearing date is set. While not an exhaustive list, the following counties have a preprinted fillable form Petition for Probate of Will and Letters Testamentary: Cook (CCP 0315), Lake, McHenry, Will, DuPage (form 3807), Sangamon, and Kane. Please note that in several (if not all) of the preprinted petitions mentioned above, the practitioner will still need to draft and attach a separate exhibit naming the heirs and legatees of the decedent and indicating whether any are minors or disabled.

Under 755 ILCS 5/6-2 the petition to admit a will to probate must include:

1. the name and place of residence of the testator at the time of his or her death;
2. the date and place of death;
3. the date of the will and the fact that the petitioner believes the will to be the valid last will of the testator;
4. the approximate value of the testator’s real and personal estate in Illinois (as to the personal estate, keep in mind that this excludes nonprobate assets);
5. the names and post office addresses of all heirs and legatees of the testator and whether any of them is a minor or disabled person (usually provided in an exhibit);
6. the name and post office address of the executor; and
7. unless supervised administration is requested, the name and address of any personal fiduciary acting on behalf of a minor or disabled person or designated to act pursuant to §28-3. 755 ILCS 5/6-2 (Do not forget the separate form to be signed by the personal fiduciary.).

Several of the preprinted petitions mentioned above reference an “Exhibit A,” which is to be filed as an attachment to the petition listing known heir and legatees of the decedent and indicating whether the heir or legatee is a minor or disabled. Counsel will need to draft an “Exhibit A.” A sample of Exhibit A can be found in §2.47 below.

Petition for Probate with the Will Annexed (in the alternative). Alternatively, a Petition for Probate with the Will Annexed may be appropriate if (1) a nominated executor does not qualify for office (*e.g.*, the named individual is deceased or disabled, the corporate fiduciary or individual does not meet other criteria set in the will, etc.); or (2) the nominated executor does qualify for office but refuses to accept office for any reason; or (3) the executor dies, resigns, or the letters of office are revoked. If the circumstances arise under (1), (2), or (3), and there are other named executors remaining, the remaining executor(s) will continue probate administration with all the powers vested in the executors. 755 ILCS 5/6-9. If there are no executors remaining or if the will did not name any executor, the will nevertheless may be probated if an interested party petitions the court, in which case letters of administration with the will annexed are issued to the new administrator of the estate. 755 ILCS 5/6-2, 5/6-9, 5/9-3, 5/9-5.

Under 755 ILCS 5/6-2, a petition for letters of administration with will annexed must include:

1. the reason for the issuance of the letters,
2. the facts showing the right of the petitioner to act as, or to nominate, the administrator with the will annexed;
3. the name and post office address of the person nominated and of each person entitled either to administer or to nominate a person to administer equally with, or in preference to, the petitioner; and
4. the date of admission if the will has been previously admitted to probate.

In at least Cook County, a preprinted Petition for Probate of Will and for Letters of Administration with Will Annexed (Form CCP 0316) is available. Conveniently, the Lake County predrafted form petition provides the option to select Petition for Probate with will annexed in Section B of the form.

Presumption of death (if applicable). If the will is admitted on the presumption of the death of the testator, there are a few additional steps. The petition also must state (1) the facts and circumstances raising the presumption of death, (2) the name and last known post office address of the testator, and (3) the name and post office address of each person in possession or control of any property of the testator. 755 ILCS 5/6-20(a). At least 30 days before the hearing of the petition, the petitioner must mail a copy of the petitions to the parties and publish a notice following the rules set out in the Probate Act. 755 ILCS 5/6-20(b). Additionally, the petitioner must publish notice of the hearing once a week for three consecutive weeks. Other specifications are expressed in 755 ILCS 5/6-20.

Courtesy copies. Although not required by every judge in every county, as a general rule, courtesy copies of all filed documents should be provided to the judge in advance of the hearing date. Check the local rules in the circuit court where the petition is filed as to whether the judge requires courtesy copies and how far in advance copies are required. In addition to the local rules, many judges, at least in Cook County, also have standing orders outlining case procedures. A copy of the filed will should also be included with the documents delivered to the court in advance of the first court date.

PRACTICE POINTER

- ✓ With mandatory e-filing of probate forms comes some frustration and confusion by practitioners, clerks, and judges regarding which forms need to be filed in advance of the court hearing, and what constitutes an “original” document to be presented at the initial hearing. Having extra patience and taking advantage of free e-filing tutorials can alleviate some confusion. However, be prepared for all scenarios by bringing extra copies of the filed documents, as well as the originals with the client’s signature.
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The following forms should be filed in advance of the first hearing but after the petition:

Proof of Heirship (Affidavit of Heirship). Section 5-3 of the Probate Act pertains to proof of heirship. 755 ILCS 5/5-3. Under the statute, the ascertainment and declaration of heirship may take place at any point in the administration of the estate but typically occurs at the initial hearing to open the estate. 755 ILCS 5/5-3(a). See also Cook County Circuit Court Rule 12.2. The ascertainment of heirship may be done through (1) a signed and sworn affidavit of any person stating the facts from which the heirship of the decedent can be ascertained or (2) from evidence either in narrative form or by questions and answers reduced to writing and certified by the court declaring the heirship. 755 ILCS 5/5-3(b). In practice, affidavits are typically the method used.

The following counties have preprinted Affidavit of Heirship forms available: McHenry, Lake, DuPage, Kane (form P1-PR-009-D), and Sangamon. In some of these countries, there are different forms depending on the relationship of the affiant to the decedent. Currently, in Cook and Will County, no preprinted form is available. The form provided by the Second Circuit is a much more detailed form that does a better job of providing for various heirship scenarios. The Second Circuit Affidavit of Heirship form can be found in §2.46 below. The affidavit should include the following information:

1. the name and age of the decedent and location of death;
2. whether the affiant is a relative of the decedent and state the relationship of the affiant to the decedent (*i.e.* spouse or child) (If the affiant is not a relative, the relationship to the decedent and the facts on which the affiant can attest to decedent’s heirship.);
3. whether the decedent was ever married, if so how many times, and the decedent’s marital status at the time of death;
4. names of decedent’s current spouse (if applicable), former spouse(s), and whether each marriage ended in death or dissolution;
5. for each marriage, whether any children were born to or adopted by the decedent, the children’s names, whether they are a minor, disabled, or predeceased the decedent, and the identity of their other parent;

6. any children born to the decedent out of wedlock; and
7. if the decedent had a child that predeceased, also include the names of any grandchildren of the decedent born to or adopted by the predeceased child and identify whether they are a minor or disabled.

The Affidavit of Heirship should be e-filed after the Petition and requires a notarized signature of the affiant.

Affidavit of Copy. An affidavit as to a copy of the will is required in certain counties such as Cook County (Circuit Court Rule 12.3(b)) and Will County (See preprinted form 36A for submitting copy of will on the Will County Clerk of Court website). The attorney for the estate must attach a facsimile of the will and certify that the facsimile (fax) is an accurate copy of the will to be admitted. The Affidavit of Copy is not required by the Probate Act, so make sure to check the local court rules before filing a copy and presenting the affidavit to the court.

Acceptance of Office for Corporate Entity. If the personal representative is a corporation, before undertaking its duties, the corporate executor must file an acceptance of office. 755 ILCS 5/12-1. The requirements for individuals acting as personal representatives are more elaborate and are described in Oath of Office and Bond below. There is a preprinted fillable form for Acceptance of Office in Lake, Cook (CCP N308), DuPage (No. 3740), Will, and McHenry Counties. A sample is also included in §2.52 below.

Designation of Resident Agent. A designation of resident agent must be filed whenever an individual executor is an out-of-state resident so that the executor can name a resident agent to accept service on his or her behalf. The attorney for the estate may act as resident agent. In at least Lake County, this designation of resident agent is included as part of the Oath of Office and Bond preprinted form that is signed by the petitioner and notarized. An example is also included in §2.48 below.

Affidavit of Military Service. An affidavit as to military service must be filed when an heir or legatee is unavailable due to military service.

Oath and Bond — No Surety/Oath and Bond — Surety. If no surety is required, this can be signed and e-filed in advance of the hearing. If surety is required, the practitioner may be able to present the original bond at the hearing (such as is the case in Cook County when the surety is usually obtained the day of the hearing on the 12th floor of the Daley Center (see the practice pointer below for a full explanation). If surety can be obtained in advance, then the Oath and Bond — Surety should be filed in advance, and the original brought to the court hearing.

The following documents should be presented to the judge at the initial hearing:

Order Admitting the Will to Probate. At the initial hearing to open the estate, the judge reviews the documents described above. If the judge is satisfied with the documents, the judge will enter the Order Admitting the Will to Probate and Appointing Representative, which states that the letters of office issue to the representative. The following counties have a preprinted

Order Admitting the Will to Probate, accessible through the clerk of court's website, which should be completed to the extent possible prior to the court date and brought to court: Cook (CCP N319), McHenry, Will (form 37B), DuPage (form 3808), Kane (form P1-PR-002), Lake, and Sangamon. At the first court date to open the estate, many judges have their clerk collect the draft order at the time of check-in in order to review it when the case is called. Make sure to bring extra copies, as the court will keep the original order signed by the judge. Note that in Cook County, this order will also automatically set a court date for a status date that is 14 months later than the date the will is admitted. Cook County Local Rule 12.13(b)(i) provides that "Unless waived by the court, the representative shall present an account of the representative's administration within 60 days after the expiration of one year after the issuance of letter of office and thereafter whenever required by the court." Interestingly, this rule is applicable to supervised estates only; however, it is also required "in practice" in independent estates as well (both testate and intestate). In addition, in some counties the order issuing letters of office must include language scheduling a status report before the court after 14 months. For example, Lake County has long required inclusion of language that an independent executor must file annual reports the first of which is due 60 days after the one-year anniversary of the order. Depending on the presiding judge, counsel will have to select a date, or it will be given by the judge or the judge's clerk.

Order Declaring Heirship. An order declaring heirship should set out the names and relationships of all known heirs and indicate if there are any unknown heirs. The following counties have a preprinted Order Declaring Heirship, accessible through the clerk of court's website, which should be completed to the extent possible prior to the court date and brought to court: Cook (CCP N305), McHenry, Will (form 30A), DuPage (form 3795), Kane (form P1-PR-010), Lake, and Sangamon. Like the Order Admitting Will to Probate, at the date to open the probate estates, many judges will have their clerk collect the draft order to review when the case is called. Make sure to bring extra copies, as the court will keep the original order signed by the judge.

Oath and Bond — Surety. Section 12-2(a) of the Probate Act provides that before taking the representative duties, every individual representative shall take and file an oath or affirmation to faithfully discharge the duties of office and have a bond approved by the court, unless waived by the court or excused by the will. 755 ILCS 5/12-2(a). Most wills excuse the surety requirement, so it is important to review the will for this provision before filing the petition.

The Probate Act provides that when the will excuses bond or security, the representative's bond shall be in full force and effect in the required amount even without filing a written bond, unless the court requires a written bond to be filed. 755 ILCS 5/12-2(b). Otherwise, the individual also must file a bond with surety that serves to bind the individual to the oath or affirmation. All bonds, when required, must have as security at least two sureties acceptable to the court or one surety company qualified to do business in Illinois and acceptable to the court. 755 ILCS 5/12-3. If one person is acting as personal representative for two or more estates, he or she may need only one bond, and if two or more people are acting as co-representatives for one estate, the court may (and usually will) require separate bonds from each. 755 ILCS 5/12-8. The court sets the amount of the surety when the will is admitted to probate. However, during the administration of the

estate, the court may require further bond or security or may release or reduce surety as is appropriate based on the value and identity of the estate assets from time to time. 755 ILCS 5/12-10 through 5/12-13.

The executor's bond must be not less than 150 percent of the value of the decedent's personal estate if a surety company provides the security or not less than 200 percent of the value of the personal estate if surety is excused or if individual sureties are used. 755 ILCS 5/12-5(a). Cook County Circuit Court Rule 12.5 should also be consulted for additional requirements that may apply to the bond. The surety bond will typically need to be renewed on an annual basis. If counsel knows that the estate is complex or that there may be issues raised during the probate case by creditors or other family members that may delay the closing of the estate, counsel should prepare the client for the prospect that the surety bond may need to be renewed.

PRACTICE POINTER

- ✓ At the first court hearing to open the estate, the attorney should bring a copy of the filed will. In addition, if the will waives the surety requirement, the attorney should flag or note where in the will this is provided, as the judge will often request this information. In Cook County, the insurance companies providing surety for the oath and bond can be found on the 12th floor of the Daley Center. A full explanation is provided in §2.24 below, as the surety requirement is typically waived by the will and not required for opening a testate estate.
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The following counties have an Oath of Office and Bond (Surety or No Surety) forms available: Cook (CCP N312 and N313), Will (Form 40F and 54B), McHenry, Lake, Sangamon, Kane (P1-PR-013-E and P1-PR-011-E), and DuPage (Form 3702 and 3721). The Oath of Office and Bond must be notarized, and if a surety is required, will have to be certified by the surety company. For a full explanation of how to obtain a surety bond, see Section 2.24 below.

The following should be filed after the will is admitted to probate, and executor is appointed:

Issuance of Letters of Office. Once the judge is satisfied with the documents presented at the hearing, the court will enter the order issuing letters testamentary, which may be officially called "letters of office," to the executor, unless for some reason issuance of letters is excused. 755 ILCS 5/6-8. If the executor is an out-of-state resident, the court typically requires that no assets may leave the state of Illinois without prior court order and that such language should be added to the order.

If the administration is supervised, 60 days after issuance of the letters of office the executor must file a verified inventory of all real and personal estate of the decedent. 755 ILCS 5/14-1. This inventory must include any known cause of action the decedent possessed at death. *Id.* The preprinted orders in at least Cook, Lake, and Will Counties provide a version of this language within the order.

PRACTICE POINTER

- ✓ In Cook County you can receive the Letters of Office the same day, by going to the 12th floor of the Daley Center. Make sure that the clerk stamps one of the orders “Ok to certify” so that the clerk’s office will issue the letters the same day. It is wise to bring a few extra copies of the order so that one can be used for this purpose. However, there is often a long wait depending on how busy the clerk of court’s office is that day. In Lake County, the clerk’s office typically will mail the letter within a week. If counsel needs additional copies of the letters, counsel can pay for the additional copies after the court hearing.
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Notice to Heirs and Legatees/Notice to Creditors/Waiver of Notice. For testate administration, notice to heirs and legatees of the testator is required to be sent not more than 14 days after the will is admitted to probate. 755 ILCS 5/6-10. Because notice is of utmost importance in probate matters, a full explanation of the requirements is discussed in §2.28 below. Ideally, waivers are obtained from each heir or legatee. However, notice need not be sent to any person whose waiver of notice is filed with the probate court. The waiver is sent after the initial court hearing opening the estate and appointing the executor. 755 ILCS 5/6-10.

PRACTICE POINTER

- ✓ In a testate estate, there is no notice requirement before the hearing unless no heir is named in the petition. When no heir is named in the petition, the Illinois State’s Attorney must be given notice of the hearing. See Cook County Circuit Court Rule 12.2(c).
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D. [2.24] Proof of Will

Proof of the will also occurs at the hearing to open the estate unless the will is self-proving.

Self-proving wills. Practitioners can include affidavits of the witnesses at the time a will is executed to create a “self-proving” will (755 ILCS 5/6-4); most attorneys do include this affidavit to mitigate against the possibility that a witness will be difficult to locate upon the death of the testator.

Evidence of proper execution. As stated earlier in this chapter, while Cook County Circuit Court Rule 12.3(a) provides a will must be filed at least three court days before the hearing on a petition for admission of the will to probate, most court dates typically are set at least two to four weeks from filing. For the will to be admitted to probate, the petitioner must establish the execution of the will by “sufficient competent evidence.” 755 ILCS 5/6-4(a). The witnesses’ statements to prove the will may be made by (1) testimony before the court, (2) an attestation clause signed by the witness and included with or attached to the will, or (3) an affidavit. 755 ILCS 5/6-4(b). If a witness does not live in the county or is unable to attend court, a deposition in accordance with 755 ILCS 5/6-5 is allowed. Some counties, such as Cook and DuPage, have preprinted forms for the petition, appearance, commission, and deposition of a witness to a will

that are available on the clerk of court's website (CCP N323-325 for Cook County and form 3756 for DuPage). In certain circumstances, the proof of handwriting of an unavailable witness is also allowed (*i.e.* death, disability, active military status). 755 ILCS 5/6-6. Such evidence requires at least two credible witnesses to attest that:

1. the witness was present and saw the testator (or some person in his or her presence and by his or her direction) sign the will in the presence of the witness;
2. the will was attested by the witness in the presence of the testator; and
3. the witness believed the testator to be of sound mind and memory at the time of signing or acknowledging the will. *Id.*

Holographic wills. Even a handwritten will (known as a “holographic” will) can be valid in Illinois if it has been properly witnessed. *In re Estate of Salzman*, 17 Ill.App.3d 304, 308 N.E.2d 83 (1st Dist. 1974) (holographic will valid if signed by testator and two witnesses can attest to signing what they believe to be testator's will); *Hoffman v. Hoffman*, 370 Ill. 176, 18 N.E.2d 209 (1938) (holographic will not valid because there was no evidence that testator intended to make her name in exordium clause her signature). Note that in Cook County Circuit Court Rule 12.3(c) provides that “the petitioner shall file a typewritten copy of the will attached to an affidavit of the petitioner or the petitioner's attorney that to the best of the affiant's knowledge the typewritten copy is correct.”

Lost wills. A will may be proven even if the original will has been lost or destroyed if the proponent or petitioner of the will overcomes the presumption that a lost will has been revoked. *In re Moos' Estate*, 414 Ill. 54, 110 N.E.2d 194 (1953). There are only certain conditions under which a will may be revoked (*e.g.*, by intentionally destroying, replacing, or affirmatively revoking it). 755 ILCS 5/4-7. When the original will cannot be found, a copy of the original can be probated if there is enough evidence to disprove the presumption that the will was revoked. A hearing on the petition to admit a copy of the last will is held to determine the sufficiency of the evidence to overcome revocation. For discussions about the evidence necessary to overcome the presumption of revocation, *see Morgan's Estate v. Smith*, 389 Ill. 484, 59 N.E.2d 800 (1945) (undisputed statements of testator short period of time before death of existence of will and intended beneficiaries sufficient to overcome presumption), and *Estate of Babcock v. McDonnell*, 119 Ill.App.3d 482, 456 N.E.2d 671, 74 Ill.Dec. 950 (3d Dist. 1983), *aff'd*, 105 Ill.2d 267 (1985) (either direct or circumstantial evidence that testator had unchanged attitude respecting disposition in will is enough to overcome presumption).

Foreign wills. Similarly, foreign wills or wills that were executed in another state pursuant to its laws may be admitted to probate in Illinois if they are validated in accordance with Article VII of the Probate Act. 755 ILCS 5/7-1, *et seq.* If a will qualifies as an international will under the Uniform International Wills Act, 755 ILCS 10/0.01, *et seq.*, it also may be admitted to probate. 755 ILCS 5/4-3(b).

Demand of proof of wills. If an “interested person,” as defined in 755 ILCS 5/1-2.11, files a petition within 42 days after the order admitting the will is entered demanding proof of the will

pursuant to 755 ILCS 5/6-21, the court will set a hearing for that purpose. At the hearing, the proponent of the will must establish the will's validity (1) by witness testimony before the court, (2) by deposition of a witness who resides out of the county as described in 755 ILCS 5/6-5, or (3) by other evidence as provided in the Probate Act but not by an attestation clause or by an affidavit. *Id.* A witness to a will executed in Illinois has a duty to appear before the court at the hearing and to testify concerning the execution and validity of the will. 755 ILCS 5/6-17. Failure to appear and testify when subpoenaed, without a reasonable excuse, can result in fines or even imprisonment. *Id.* At the hearing, if the proponent of the will validates it by sufficient competent evidence, the original order admitting the will to probate and appointing the representative is confirmed and remains effective as of its original date of entry. If instead there is "proof of fraud, forgery, compulsion or other improper conduct, which in the opinion of the court is sufficient to invalidate or destroy the will," then the order admitting the will and appointing the representative is vacated. 755 ILCS 5/6-21.

E. [2.25] Documents and Time Frames for Intestate Administration

The procedures for opening the probate estate of an individual who dies intestate (without a valid will) are similar in most respects to the probate procedures for a testate estate discussed in §2.23 above. Counties such as Lake, Sangamon, and McHenry make it easier to find the intestate version of the required forms online. Forms relating purely to the will, of course, need not be prepared or presented, but generally the appropriate variation of the forms described in the discussion of testate estates simply omit all references to the will and substitute the word "administrator" for the word "executor."

Before the first court date, counsel should

1. file the original Petition for Letters of Administration (signed by the petitioner) and obtain a court date;
2. file the Affidavit of Heirship (requires a notarized signature of the affiant);
3. file the Oath of Office and Bond — Surety (signed and notarized by the petitioner);
4. send Notice of the Hearing to all Heirs (they must be given 30 days' notice) or obtain Waivers of Notice;
5. file Designation of Resident Agent (can be filed before or after initial court date if applicable); and
6. file Acceptance of Office as Personal Fiduciary (if applicable).

Counsel should prepare and file before the first court date or bring to first court date

1. Order Appointing Representative (and bring at least two extra copies to court);
2. Order Declaring Heirship (and bring at least two extra copies to court);
3. Oath of Office and Bond — Surety (signed and notarized by the petitioner)

[NOTE: Some such forms require the judge's approval before filing. Also, In Cook County, if the attorney is obtaining a surety from the 12th floor before court, counsel may not have time to file the Oath and Bond prior to the court hearing. Submit the certified Oath and Bond, signed by the petitioner and stamped by the surety company, to the judge at the first court date.]

After the first court date opening the estate, counsel should

1. file the Designation of Resident Agent (if applicable) (can be filed prior to the first court date);
2. obtain Letters of Administration from the Clerk of Court; and
3. send notice to known creditors and public claims notice.

Like the discussion in §2.23 above for testate administration, many counties in Illinois have predrafted forms for opening an intestate estate. The following forms are required for intestate administration:

Cover Sheet/Attorney Certification. See the discussion in §2.22 above. This is an administrative form that is not presented to the judge but is rather filed at the time the petition is filed.

Petition for Letters of Administration. Like the Petition to Admit Will to Probate and Letters Testamentary, in an intestate estate, the initiating document is the Petition for Letters of Administration. The following counties have a separate, preprinted fillable PDF Petition: Cook (CCP N302), McHenry, Will (form 36C), DuPage (form 3812), Sangamon, and Kane (form P1-PR-003-E). The following information is included in the petition:

1. the name of petitioner, name of decedent, and residence of the decedent at the time of death;
2. the place and date of death including the county;
3. the approximate value of the personal estate, real estate, and annual income of the estate;
4. the names and addresses of the decedent's heirs, and if such person is a minor or disabled, the personal fiduciary legally qualified to act for the minor or disabled heir; and
5. the name and address of the person(s) whom the petitioner is requesting letter of administration be issued to.

Like the Petition for Probate of Will and Letters Testamentary, a separate exhibit page should be attached to the Petition for Letters of Administration. In addition to the information discussed in subpoint d., the exhibit should also indicate whether any of the heirs listed in the exhibit have preference to nominate and/or administer or are equal in preference as the petitioner. Refer to 755 ILCS 5/9-3 for the list of persons entitled to preference.

Notice to Heirs. Also, if a petition is filed by an heir, that heir must provide notice of the hearing on that petition to any other heirs with equal or higher preference for the nomination not less than 30 days before the hearing on the petition. 755 ILCS 5/9-5(a). If an heir is waiving notice, the standard form can be found in §2.53 below. A predrafted waiver of notice can be found in Cook and Lake Counties.

Notice of the petition must be given to all known heirs. These notices are different from testate administration because there is no notice of will. If there are unknown heirs, the administrator must publish a notice in a newspaper publication and (at least in Cook County) notify the State's Attorney of the proceedings. Cook County Circuit Court Rule 12.2(c).

Surety Bond. Like testate administration, the Oath of Office and Bond of the representative must be signed by the representative before a notary and presented at the initial court hearing (or possibly filed before in some courts). An administrator must obtain a surety bond, as there is no will in which surety could be waived. In Cook County the bond can be obtained on the 12th floor of the Daley Center. Sample bond applications are available here in §2.54 below or can be acquired by making arrangements with a particular bond company ahead of time. For counties outside Cook, the attorney will need to look up bond companies that issue executor or administrator bonds and determine what information is needed from the client to complete the application process. Because the attorney will need to obtain the surety bond before the first court date, it makes sense to prepare the application while getting the petition ready for the petitioner's review and signature. After a surety bond application is submitted, it typically takes seven to ten days for the bond to be issued. The attorney needs to take the certified document to court at the initial presentment. Not having the surety bond before the initial court date will delay the issuance of letters of office to the administrator.

Bond notwithstanding, if an heir does not fully trust the appointee, this may be a good reason to request supervised administration. Otherwise, the administrator may undertake independent administration of the estate. If there is no one who has the right to administer the estate, the public administrator can be appointed. 755 ILCS 5/13-4. The public administrator has all the same duties and rights as any other administrator until discharged by the court. *Id.*

Affidavit of Heirship. The determination of heirship (and the accompanying affidavit) takes on particular importance in an intestate estate, as it is the heirs who will receive the decedent's property. See 755 ILCS 5/5-3. The rights of heirs to the property of an intestate decedent are set out in 755 ILCS 5/2-1 and 5/2-2 (in the case of children born outside of a marriage). See §2.9 above for what is included in the affidavit of heirship.

Order Declaring Heirship. An order declaring heirship should set out the names and relationships of all known heirs and indicate if there are any unknown heirs. The following counties have a preprinted Order Declaring Heirship, accessible through the clerk of court's website, which should be completed to the extent possible prior to the court date and brought to court: Cook (CCP N305), McHenry, Will (form 30A), DuPage (form 3795), Kane (form P1-PR-010), Lake, and Sangamon. Like the Order Admitting Will to Probate, at the date to open the probate estates, many judges will have their clerk collect the draft order to review when the case is called. Make sure to bring extra copies, as the court will keep the original order signed by the judge.

Order Appointing Representative. At the initial hearing to open the estate, the judge reviews the documents described above. If the judge is satisfied with the documents, the judge will enter the Order Appointing Representative, which states that the letters of office issue to the representative. The following counties have a preprinted Order Appointing Representative of Decedent's Estate — Intestate, accessible through the clerk of court's website, which should be completed to the extent possible prior to the court date and brought to court: Cook (CCP N314), McHenry, Will (form 36D), DuPage (form 3810), Kane (form P1-PR-004), Lake, and Sangamon. At the first court date to open the estate, many judges will have their clerk collect the draft order at time of check-in in order to review when the case is called. Make sure to bring extra copies, as the court will keep the original order signed by the judge.

Obtain Letters of Administration and publish notice. Once the judge issues the Order Appointing Representative, the practitioner should be able to order or otherwise obtain certified Letters of Administration, which allows the appointed administrator to act on behalf of the estate. Like the Letters of Office for an executor, the Letter of Administration are obtained from the circuit court clerk's office. In Cook County, the Letters of Administration can be obtained the same day, but often there is a wait.

Notice should be sent to all heirs not otherwise entitled to advanced notice under §9-5(a), in accordance with §9-5(b), 14 days after entry of an order directing that original letter of office issue to the administrator. 755 ILCS 5/9-5. Ideally, the administrator should try to obtain waivers of notice for all heirs listed in the petition. As previously discussed in the testate administration, several counties have predrafted forms for waiver of notice.

F. [2.26] Electronic Filing

For opening a probate estate in Illinois, e-filing is mandatory in all counties. To register for e-filing, go to the eFileIL website at efile.illinoiscourts.gov. One source of confusion amongst practitioners is the option to select an Electronic Filing Service Provider (EFSP). Before e-filing became mandatory, several counties that offered e-filing were using independent systems. Now, practitioners have several options for e-filing providers and can select a provider that suits their firm's individual needs. (see efile.illinoiscourts.gov/documents/Service-Provider-Comparison-Table.pdf for a comparison chart of current providers and offered benefits). Once you select a provider, you can set up an e-filing account. The chart found above has a link to each provider's account portal, which will allow you to set up the username, password, and enter a credit card to be used for payment. Please note that some counties do not accept American Express. The eFileIL web portal also provides training videos and guides for registering and using the e-filing systems.

For the Odyssey system, below is a step-by-step guide to filing a Petition in Cook County. (This specific guide was posted by a member on the ISBA Trusts and Estates Section Council listserv.)

1. File the signed petition and wait for it to be approved and assigned a case number. Once a case number is assigned, file the file-stamped petition with the case number;

2. Select “File into Existing Case” (When typing case number do not add spaces and make sure that case number is 6 digits – YYYYYY. Please note that entering the case number incorrectly will cause the system to not recognize the pending case. The case number must be entered exactly as listed on the petition.)
3. Under “Actions” choose “File into Case”
4. Under “Case Cross Reference Number” type your Cook County attorney code and select “Cook County Attorney Code”;
Hit “Add Case Cross Reference”
Under “Case Cross Reference Number” type “Motion” and select “Motion Type — Case Management”
Hit “Add Case Cross Reference”
Hit “Save Changes”
5. Under “Filing Type” select “eFile”
Under “Filing Code” select “Case Management Scheduled”
Under “Lead Document” upload file-stamped Petition to Open Probate
Hit “Save Changes”
6. Under Fees
Complete
Hit “Save Changes”
7. Under Submission Agreements
Check Box
Hit “Summary”
8. Next Screen
Review and hit “Submit”
“Court Date” window will pop up and select court date
9. Wait for document to be approved. The court date will be printed on left hand side of the petition. The e-mail address associated with the e-filing account should receive an alert with a link to the e-filed document as well.

Unlike the CM/ECF system (for those familiar with federal court filing), the e-filing system currently in place will not automatically accept a document as “filed.” Rather, if the document is accepted, the filing stamp will reflect the actual date and time submitted but will not automatically generate the file-stamped documents until the document is accepted. For example, if a petition to admit a will to probate is e-filed on a Monday at 6:00 p.m. and is accepted, you will likely receive the filed-stamped document on Tuesday. The file stamp in upper corner of the petition will reflect the actual date and time of filing (*i.e.* Monday at 6:00 p.m.).

However, sometimes documents that have been e-filed will be rejected. Some common reasons for a document to be rejected are that

1. the document is not properly redacted;
2. the description of the document that is selected does not match the actual document that is being filed;
3. the document is filed in the wrong case; or
4. the party that is to be served is not listed on the service list that is filed.

G. [2.27] Notices

Once the court has entered an order admitting a will or appointing a representative, the Probate Act requires personal representatives to provide notice of the decedent's death (1) to any of the decedent's heirs and legatees who have not signed waivers and (2) to the decedent's creditors. See 755 ILCS 5/6-10; 755 ILCS 5/9-5. Effective for estates of decedents dying on or after September 7, 1989, the notice provisions of the Probate Act were amended to conform them to the constitutional notice requirements enunciated by the U.S. Supreme Court in *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 99 L.Ed.2d 565, 108 S.Ct. 1340 (1988), which held that due process required actual notice to reasonably ascertainable creditors of an estate that the nonclaim statute of limitations had begun to run. At any time before the estate is closed, the attorney must file proof of mailing and publication of the notice with the probate court.

1. [2.28] Notice to Heirs and Legatees

As provided in 755 ILCS 5/6-10(a), within 14 days after admission of the will to probate, the personal representative or executor must mail a notification to each heir or legatee in the petition for probate of the will or for letters testamentary that the will has been admitted to probate and a representative appointed. The mailing must include (a) a copy of the petition and (b) a copy of the order admitting will to probate and appointing representative, together with an explanation of the rights of the heirs and legatees to require formal proof of will and to contest the admission of the will to probate. *Id.* In Cook County, a preprinted Notice to Heirs and Legatees — Will Admitted is available under form CCP 1020, which is to be mailed along with the filed petition and order to each heir and legatee. Cook County also provided a preprinted Proof of Mailing and Publication (form CCP N1000), which should be filed upon mailing all required noticed and publishing. Similarly, for intestate administration, 755 ILCS 5/9-5(b) provides that not more than 14 days after the entry of an order directing that original letters of office be issued to an administrator, the administrator shall mail a copy of the petition to issue letters and a copy of the order showing the date of its entry to all heirs who were not entitled to notice 30 days before hearing on the petition.

However, notice need not be sent to any person whose waiver of notice is filed with the probate court. 755 ILCS 5/6-10(b); 755 ILCS 5/9-5(c). In Cook County, a predrafted Waiver of Notice is provided as form CCP N303. Notice to Heirs and Legatees of a Foreign Will Admitted to Probate has a different notice form, which can be found at CCP 1022.

If the name or address of an heir or legatee is not stated in the petition, newspaper publication of this notice is required. The notice must be published in a newspaper in the county where the order was entered once a week for three successive weeks with the first publication not more than 14 days after the entry of the order. Notice published for heirs and legatees may be combined with notice published for claimants and creditors. For some newspapers, like the Law Bulletin and Chicago Tribune, the practitioner may make the request to publish by e-mail, rather than in person or by mail. A sample notice of publication (mail and e-mail) is included in §2.55 below. For probate in Cook County, the Chicago Daily Law Bulletin is the local publisher for probate notices. The attorney can submit the notice online by setting up an account with the Law Bulletin at www.cookcountypublicnotice.com/login.

The consequences for omitting or failing to notify an heir or legatee may be steep. Under *Vogel v. Katz*, 64 Ill.App.2d 126, 212 N.E.2d 295, 298 (1st Dist. 1965), representatives must make “reasonable inquiry” to ascertain the information called for under 755 ILCS 5/6-11, such as the names and addresses of all heirs and legatees. If a representative fails to do so, the court’s order admitting a will to probate is set aside as to that heir or legatee. *See also In re Estate of Stanford*, 221 Ill.App.3d 154, 581 N.E.2d 842, 163 Ill.Dec. 688 (5th Dist. 1991) (affirming standard stated in *Vogel*). Statutorily, the section of the Probate Act addressing omitted or unnotified heirs and legatees provides only limited relief. 755 ILCS 5/6-11. Also, if a previously omitted heir is discovered, an amended petition must be filed with the probate court and notice thereafter given to the omitted person. However, no new order admitting the will to probate must be entered. The original order will be effective as to the omitted person as of the date of filing of the amended petition and as to all other persons as of its original effective date.

If any legatee is a charity and is receiving in excess of \$4,000 from the estate, the executor is deemed to be a “trustee” under §2 of the Charitable Trust Act, 760 ILCS 55/1, *et seq.* 760 ILCS. The definition of “trustee” includes any “estate representative . . . holding property [of a value in excess of \$4,000] for . . . any charitable purpose.” 760 ILCS 55/3. *See also In re Estate of Barth*, 339 Ill.App.3d 651, 792 N.E.2d 315, 327, 275 Ill.Dec. 84 (1st Dist. 2003), quoting *In re Estate of Stern*, 240 Ill.App.3d 834, 608 N.E.2d 534, 536, 181 Ill.Dec. 461 (4th Dist. 1992) (“There is no requirement that express trust language be used to qualify the funds as a ‘charitable trust.’”). Accordingly, at least in Cook County, in addition to providing the required notices to any charity named as a legatee, the executor must also provide notice to the Illinois Attorney General’s Division of Charitable Trusts. In practice, many judges require that the Attorney General be treated as an interested party and provided with notice regardless of the size of the bequest.

If the executor is deemed to be a “trustee” as defined by 760 ILCS 55/3, they must file and register with the Attorney General, within six months after any part of the income or principal is received for application to the charitable purposes, a copy of the trust agreement and articles of incorporation. 760 ILCS 55/6(a). The trustee must also file with the Attorney General periodic annual written reports under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration of the assets in accordance with the rules and regulations of the Attorney General. 760 ILCS 55/7.

2. Notice to Creditors

a. [2.29] Duty To Publish

For both testate and intestate administration, the representative of the decedent's estate must publish notice for all unknown creditors of the estate. This notice must appear once each week for three successive weeks in a newspaper published in the county where the estate is being administered. It must set forth (1) the death of the decedent, (2) the name and address of the representative and of his or her attorney, and (3) the deadline date before which claims must be filed. 755 ILCS 5/18-3. If the notice must be published in a county in which the lawyer does not practice regularly, the clerk of the court usually can advise in which paper the notice can be published. The six-month claim period on claims by unknown creditors begins from the date upon which the representative first publishes notice to unknown creditors, heirs, and other potential claimants.

b. [2.30] Duty To Notify All Known Creditors

For both testate and intestate administration, the representative of the estate also must mail or deliver the information contained in the published notice to each creditor whose name and address "are known to or are reasonably ascertainable by the representative." 755 ILCS 5/18-3(a). For known creditors who receive actual notice, the deadline to file a claim is either three months from the date of mailing (or delivery of the notice) or six months from the date of first publication, whichever is later. *Id.* Any claim filed after this deadline will be barred by the court. 755 ILCS 5/18-12(a)(1). To avoid giving a known creditor more time than statutorily required to file a claim, the practitioner should calendar the date three months prior to the expiration of the six-month claim period and consider sending notice to the known creditor at that time. However, the practitioner should get the necessary information about known creditors well in advance of this date. Otherwise, counsel may end up extending the claims period beyond six months, if counsel discovers that a known creditor did not receive notice.

3. [2.31] Proof of Mailing and Public Action

The proof of mailing is not required at the beginning of the administration of the estate, but the estate cannot be closed without it. Accordingly, it behooves the attorney to file the proof of mailing contemporaneously with the sending of the notices and/or publishing to unknown heirs or creditors. Multiple "proof of mailing" forms can be filed in the estate. A sample Proof of Mailing Form for Cook County is provided in §2.55 below. Evidence of compliance with the notice provisions of the Probate Act can be the most important component of proper probate administration. How the attorney handles notice throughout the administration affects the ability to efficiently distribute and close the estate, and, therefore, understanding the impact of the notice rules at the outset of administration is crucial.

VI. [2.32] CLAIMS, AWARDS, ELECTIVE SHARES, AND CONTESTS

A detailed discussion of claims against the estate is contained in Chapter 5 of this handbook. That said, the authors would be remiss not to point out that the personal representative of a newly

opened estate must promptly address issues pertaining to creditor claims, spousal and child awards, elective shares, and the timeframe for will or trust contests which are discussed in §§2.33 – 2.40 below.

A. [2.33] Allowance of Claims

Once notice is published and known creditors are notified, claims may start to be filed against the estate. When seeking payment from the estate, the creditor must provide, in writing, the nature of the claim and the relief sought. 755 ILCS 5/18-2. A creditor with a claim against the estate may send that claim to the personal representative, file the claim with the probate court, or both. If the claim is sent to the personal representative but is not filed with the court, the personal representative may disallow all or any part of the claim that has not been filed with the court by mailing or delivering a notice of disallowance to the claimant or, if known, to the claimant's attorney pursuant to 755 ILCS 5/18-11(b). A predrafted Notice of Disallowance of Claim for Cook County can be found using number CCP 0505 and Form 3817 for DuPage County.

Alternatively, the representative may at any time pay or consent in writing to all or any part of any claim that is not barred under 755 ILCS 5/18-12, if and to the extent the claim has not been disallowed by the court and the representative determines it to be valid. 755 ILCS 5/18-11(a). Payment or consent by the personal representative constitutes allowance of the claim and binds the estate.

Allowance of a claim is not a guarantee that it will be paid in full. Claims are paid in the order of their classification, and if the estate is insufficient to pay the claims in any one class, the claims in that class will be paid pro rata and claims from a lower class will not be paid. 755 ILCS 5/18-13. Section 18-10 of the Probate Act sets forth the classification of claims. It is important to advise a newly appointed personal representative regarding how and when to make payments from an estate during the administration especially when the solvency of the estate is uncertain or when claims of creditors are expected. Effective August 24, 2018, 755 ILCS 5/18-10 expanded the definition of fourth-class claims.

Lastly, if a claim against the estate is filed with the court, the representative, or any interested party as defined in the Probate Act, may contest the claim. A full explanation of this process is explained in Chapter 11 of this Handbook.

B. [2.34] Time Limitations on Filing Claims

The Probate Act states that every claim against a decedent's estate (other than administration expenses and a surviving spouse or child award) is barred if not filed within the date specified in the published or written claims notice, whichever is applicable. 755 ILCS 5/18-12(a). In addition, all claims are in any event barred if not filed within two years of the decedent's death, regardless of whether letters of office are issued during that period. 755 ILCS 5/18-12(b). An exception is provided to the extent the estate is protected by liability insurance. 755 ILCS 5/18-12(c).

PRACTICE POINTER

- ✓ The executor should take measures to gather the decedent's known creditors' information as soon as possible even though it is common to wait until three months before the end of the six-month period to provide actual notice. If the executor fails to provide actual notice, the claims period for that credit can extend beyond the six-month bar date.
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C. [2.35] Surviving Spouse and Child Awards

Section 15 of the Probate Act allows the surviving spouse and children of decedents to receive funds from the probate estate (called "awards") in amounts that the court deems reasonable for the proper support of the spouse and/or the decedent's dependent children (both minor and adult). 755 ILCS 5/15, *et. seq.* This section of the Probate Act was amended on June 1, 2018. Notably, the changes included a new notice provision for adult dependent children to claim the award. At the time of publication, no new forms were available from any county to address this change; however, practitioners should be aware that the court may be seeking proof of notice to the surviving spouse or adult dependent children as to the availability of these awards and adult children need to seek the award in writing from the representative. 755 ILCS 5/15-1(a-5), 5/15-2(b-5).

The Probate Act allows the surviving spouse of a decedent to get an award in an amount that the probate court deems reasonable for the proper support of the spouse for the period of nine months after the decedent's death. 755 ILCS 5/15-1(a). The spouse's award should be set after consideration of the condition in life of the surviving spouse and of the condition of the estate. *Id.* The surviving spouse may also receive an additional sum of money that court deems reasonable during the relevant period for the support of minor or adult dependent children that reside with the surviving spouse at the time of the decedent's death. 755 ILCS 5/15-1(a), 5/15-1(a-5).

The spouse's award (if requested) must be at least \$20,000, together with an additional sum not less than \$10,000 for each such minor child. 755 ILCS 5/15-1(a). The award is to be paid to the surviving spouse at such time or times, not exceeding three installments, as the court directs. In determining the amount of support necessary for the surviving spouse, the court may consider nonprobate assets passing to the spouse as a result of the decedent's death. *See LaSalle National Bank v. Caffrey*, 120 Ill.App.3d 917, 458 N.E.2d 1147, 76 Ill.Dec. 493 (1st Dist. 1983). At the surviving spouse's election, all or some of the award can be from the decedent's goods and personal property not otherwise specifically bequeathed. 755 ILCS 5/15-4(a).

The surviving spouse is also allowed an award for each adult dependent child who is likely to become a public charge and was financially dependent on the decedent and resided with the surviving spouse at the time of the decedent's death. 755 ILCS 5/15-1(a-5). The surviving spouse is allowed a sum of money that the court deems reasonable (or that is agreed on by the surviving spouse and representative of the decedent's estate or affiant under a small estate affidavit pursuant to 755 ILCS 5/25-1) for the proper support of the adult child for a period of nine months after the death of the decedent in a manner suited to the condition in life of the adult child of the decedent and to the condition of the estate. *Id.* For an adult dependent child of the decedent, this

award is at least \$5,000 per adult child to be paid to the surviving spouse in no more than three installments, as the court directs. If the surviving spouse dies or abandons an adult child before the award for support of the adult child is paid in full, the amount unpaid will be directed for the benefit of the adult child to a person that the court determines. *Id.*

Effective June 1, 2018, within 30 days of the surviving spouse or adult child receiving written notice of this potential award from the estate representative or the affiant under a small estate affidavit, the surviving spouse or adult child (or the adult child's guardian or other adult acting on his or her behalf) must provide written notice to the estate representative or affiant asserting that the adult child was financially dependent on the decedent at the time of decedent's death. 755 ILCS 5/15-1(a-5). Failure to provide written notice to the representative of the estate or affiant within 30 days after receiving notice from the representative or affiant bars the right to receive this award. *Id.* The representative or affiant's notice of the potential award under 755 ILCS 5/15-1(a-5) may be combined with the notice provided under 755 ILCS 5/6-21 (formal proof of will) and 755 ILCS 5/8-1 (notice of right to contest will).

The surviving spouse is entitled to the award unless the decedent's will expressly provides that the provisions thereof for the surviving spouse are in lieu of the award and the surviving spouse does not renounce that will. 755 ILCS 5/15-1(b). As long as the award amount falls within the statutory guidelines and assets are available, it may be paid automatically to the surviving spouse without court approval. See 735 ILCS 5/15-1. If the spouse is seeking additional amounts, such request must be made to the court.

If the decedent leaves a minor or adult dependent child who does not reside with the decedent's surviving spouse at the time of death, an award is allowed to each such child for the child's proper support for the nine-month period after the decedent's death in a manner suited to the condition in life of the child and to the condition of the estate. 755 ILCS 5/15-2(a), 5/15-2(b-5). This award is exempt from the enforcement of a judgment, garnishment, or attachment in the possession of the representative. *Id.*

If the decedent is not survived by a spouse, all minor and adult dependent children (who are exempt from a judgment, garnishment, or attachment in the possession of a representative) of the decedent similarly are allowed a sum of money that the court deems reasonable for the proper support of those children for the period of nine months after the death of the decedent in a manner suited to the condition in life of those children and to the condition of the estate. 755 ILCS 5/15-2(b). The award must be at least \$10,000, and the court may allow an additional sum of at least \$20,000 to be divided equally among such children or as the court directs. *Id.*

As in the case of the surviving spouse award, effective June 1, 2018, the representative of the estate or affiant pursuant to 755 ILCS 5/25-1 must direct notice of the child's award to the adult dependent child or adult dependent child's agent, guardian, or other adult on behalf of the adult child. 755 ILCS 5/15-2(b-5). Within 30 days after receiving written notice of this potential award from the estate representative or affiant, the adult child, or his or her guardian, agent, or other adult acting on his or her behalf, must provide written notice to the representative or affiant asserting that the adult child was financially dependent on the decedent at the time of the decedent's death. *Id.*

Failure to provide written notice to the representative or affiant within 30 days after receiving notice from the representative or affiant will bar the adult child's right to receive the award. 755 ILCS 5/15-2(b-2). As in the case of the spouse's award, the representative's notice of the potential award under 755 ILCS 5/15-2(b-5) may be combined with the notice provided under 755 ILCS 5/6-21 (formal proof of will) and 755 ILCS 5/8-1 (notice of right to contest will).

A child's award under the Probate Act is separate from an award for child support under the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/457, *et seq.*), and therefore, does not require a setoff from future child support awards. *In re Estate of Hudson*, 385 Ill.App.3d 1112, 896 N.E.2d 1123, 1127, 324 Ill.Dec. 904 (5th Dist. 2008).

In situations when a child is living with a parent who is not the decedent's spouse or even for children who are, many times the court will require a guardian ad litem (GAL) to be appointed. In some cases, the attorney should seek the appointment — especially when the child's interests may be adverse to the surviving parent's interests. The purpose of the GAL is to advise the court with respect to the best interests of the minor during the administration and to represent the interests of a minor. During probate administration, a GAL can be appointed for other reasons such as settlement of claims or the sale or mortgage of real estate when the minor has an interest. A GAL could also be necessary to represent an adult dependent child or a child who is a ward of the court as a disabled adult.

If the decedent is not survived by a spouse, the children of the decedent have the same right of selection of goods and chattels to satisfy their awards as is given the surviving spouse. The selection must be made and filed in the same manner as a surviving spouse's selection. 755 ILCS 5/15-4(b).

Surviving spouse and child awards are classified as second-class claims against the estate, subordinate only to payment of the decedent's funeral and administration expenses and to statutory custodial claims. 755 ILCS 5/18-10. There is no requirement that the claim for the award be filed within the statutory claim period, and no direct statute of limitations applies. The surviving spouse may waive his or her right to an award at any time.

In independent administration, spouse and child awards, if allowable and not waived or barred, may be paid without court approval unless the total value of all such awards exceeds five percent of the gross value of the estate, in which case the minimum statutory award still may be paid without approval. 755 ILCS 5/28-7(a). Surviving spouses and children retain their right to satisfy their award with goods and chattels under independent administration. 755 ILCS 5/28-7(b).

D. [2.36] Statutory Custodial Claims

The Probate Act authorizes family members (specifically spouses, parents, siblings, or children) of a decedent who was disabled to file a statutory custodial claim against the disabled person's estate that would compensate the claimant for the pre-death economic and emotional costs of caring for the decedent. 755 ILCS 5/18-1.1. To be eligible, the claimant must have been living with and personally caring for the decedent for at least three years. The claim is to be based

on the nature and extent of the decedent's disability and, at a minimum but subject to the extent of the assets available, is to be determined on the following sliding scale: 100 percent disability — \$180,000; 75 percent disability — \$135,000; 50 percent disability — \$90,000; and 25 percent disability — \$45,000.

The claim is in addition to any other claim, including a reasonable claim for nursing and other care. Statutory custodial claims are to be paid in full as first-class claims before any other claims (including that of the State of Illinois) and before payment to the heirs or legatees of the decedent. 755 ILCS 5/18-10. The court also has authority to reduce the statutory custodial claim when the living arrangements also were intended to and did provide a financial or physical benefit to the claimant. In deciding whether to reduce a statutory custodial claim, the court may consider factors including but not limited to

1. the free or low cost of housing provided to the claimant;
2. the alleviation of the need for the claimant to be employed full time;
3. any financial benefit provided to the claimant;
4. the personal care received by the claimant from the decedent or others; and
5. the proximity of the care provided by the claimant to the decedent to the time of the decedent's death. 755 ILCS 5/18-1.1.

E. [2.37] Presumptively Void Transfers Act

Enacted in August 2014, the Presumptively Void Transfers Act, 755 ILCS 5/4a-5, *et seq.*, presumptively voids any testamentary transfer to any unrelated caregiver, when the value of transferred property exceeds \$20,000. The Act applies to all transfer instruments created on or after January 1, 2015, which includes but is not limited to, wills, trusts, deeds, and other beneficiary designation forms. 755 ILCS 5/4a-5. The Act does not apply to a spouse, child, grandchild, sibling, aunt, uncle, niece, nephew, first cousin, or parent of the person receiving assistance. The provisions of the Act are in addition to any other principle or rule of law and does not limit or abrogate any common law unless inconsistent with the Act. 755 ILCS 5/4a-20.

F. [2.38] Elective Shares

The spouse of a decedent has the option to renounce the will and instead receive his or her elective share under the Probate Act. 755 ILCS 5/2-8(a). After the payment of all just claims, the spouse's elective share is one third of the entire estate if the decedent left a descendant or one half of the entire estate if the decedent left no descendant.

To renounce the will, the surviving spouse must file a signed, written declaration of renunciation in the court where the will was admitted to probate within seven months of the admission of the will unless the court deems that there are extenuating circumstances. 755 ILCS

5/2-8(b). There is no standard or preprinted form for this, as it is not a commonly filed document. Once the instrument is filed, a complete bar to any claim of the surviving spouse under the will is imposed. 755 ILCS 5/2-8(b). The court will adjust the distributions to the remaining heirs and legatees. 755 ILCS 5/2-8(d).

G. [2.39] Will Contests

A proceeding to contest the validity of a will admitted to probate or to contest the denial of admission of a will must be commenced within six months of entry of the original order admitting the will or denying admission. 755 ILCS 5/8-1, 5/8-2. Any interested person, as defined by 755 ILCS 5/1-2.11, may file a petition initiating such a proceeding. 755 ILCS 5/8-1(a). The statute directs the petitioner to mail or deliver a copy of the petition to the personal representative, his or her attorney of record, and each heir and legatee listed on the petition to admit the will. 735 ILCS 5/8-1(b). However, the failure to provide a copy of the petition to an heir or legatee will not affect the validity of a judgment entered in the proceeding. 755 ILCS 5/8-1(b), 5/8-2(b).

When a decedent has a pourover will with a revocable trust as the beneficiary and the will is admitted to probate, an action to set aside or contest the validity of the trust also must be commenced before the six-month period for challenging the will expires. 755 ILCS 5/8-1(a), 5/8-2(a); 735 ILCS 5/13-223. Similarly, malpractice actions against an attorney in connection with the estate plan also must be filed within the six-month period once probate has been commenced. *Poullette v. Silverstein*, 328 Ill.App.3d 791, 767 N.E.2d 477, 263 Ill.Dec. 26 (1st Dist. 2002). See *In re Estate of Ellis*, 236 Ill.2d 45, 923 N.E.2d 237, 243, 337 Ill.Dec. 678 (2009) (holding that six-month limit did not apply to tort claim of intentional interference with expectancy when will contest remedy had not been available to plaintiffs and would not have provided sufficient relief). See also *Robinson v. First State Bank of Monticello*, 97 Ill.2d 174, 182 – 183, 454 N.E.2d 288, 73 Ill.Dec. 428 (1983) (holding that six-month limitation period did apply to action for tortious interference when plaintiff knew that will had been admitted to probate, took no action to contest probated will, entered into settlement foregoing rights to dispute will, and then filed claim for tortious interference); *Fitch v. McDermott, Will & Emery, LLP*, 401 Ill.App.3d 1006, 929 N.E.2d 1167, 341 Ill.Dec. 88 (2d Dist. 2010) (holding that estate beneficiaries were barred from asserting claims for conspiracy to unduly influence beyond six-month period for contesting wills and barred from asserting legal malpractice claims beyond period for filing claims against estate).

In Cook County, when the decedent's trust is the sole legatee of an estate (usually pursuant to a pourover will) and the executor of the estate is also the trustee of said trust, the beneficiaries of the trust are required to approve the final account, or the representative must certify that notice was given to or waived by the beneficiaries. See *Norris v. Estate of Mary Norris*, 143 Ill. App.3d 741, 493 N.E.2d 121, 97 Ill.Dec. 639 (1st Dist. 1986). The Norris affidavit form must be filed in connection with closing the estate and, therefore, is covered in more detail in Chapter 4 of this handbook. However, it is important for the attorney to be aware of the so-called "Norris Rule" at the outset if these circumstances apply to the case.

There is an exhaustive treatment of will contests and other types of litigation affecting estates in LITIGATING DISPUTED ESTATES, TRUSTS, GUARDIANSHIPS, AND CHARITABLE BEQUESTS (ICLE®, 2016).

VII. [2.40] FINAL CONSIDERATIONS

Because an estate is a separate entity for income tax purposes, promptly after opening the estate, the estate is required to obtain a separate federal taxpayer identification number. The attorney should clarify with the client who will be obtaining this number. This number will be needed in order to open a checking account, retitle accounts in the name of the estate, and file tax returns if they are required. Income taxation of the decedent's estates and trusts is discussed in greater detail in Chapter 3 of ESTATE ADMINISTRATION FUNDAMENTALS (IICLE[®], 2019).

VIII. FORMS

A. Small Estate Affidavit

1. [2.41] Cook County

Small Estate Affidavit

(04/28/15) CCP N608 A

SMALL ESTATE AFFIDAVIT

(To be used only when decedent died on or after September 4, 1991)

I, _____, on oath state:
(name of affiant)

- 1. (a) My post office address is: _____
- (b) My residence address is: _____
- (c) I understand that, if I am an out-of-state resident, I submit myself to the jurisdiction of Illinois courts for all matters related to the preparation and use of this affidavit. My agent for service of process in Illinois is:

Name _____ Address _____
City/Zip Code _____ Telephone _____

I understand that if no person is named above as my agent for service or, if for any reason, service on the named person cannot be effectuated, the Clerk of the Circuit Court of Cook County, Illinois is recognized by Illinois law as my agent for service of process.

- 2. The decedent's name is _____ .
- 3. The date of the decedent's death was _____ , and I have attached a copy of the death certificate.
- 4. The decedent's place of residence immediately before his death was _____ .

5. No Letters of Office are now outstanding on the decedent's estate and no petition for letters is contemplated or pending in Illinois or in any other jurisdiction, to my knowledge.

6. The gross value of the decedent's entire personal estate, including the value of all property passing to any party either by intestacy or under a will, does not exceed \$100,000. (Attach a list of each asset, e.g. cash, stock and its fair market value.)*

- 7. (a) *All of the decedent's funeral expenses and other debts, have been paid, **OR**
- (b) All of the decedent's known unpaid debts are listed and classified as follows (include the name, post office address and amount): **Strike either 7(a) or 7(b).**

Class 1: funeral and burial expenses, which include reasonable amounts paid for a burial space, crypt, or niche; a marker on the burial space; and care of the burial space, crypt, or niche; expenses of administration; and statutory custodial claims as follows:

<u>Name and Post Office Address</u>	<u>Amount</u>
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Class 2: the surviving spouse's award or child's award, if applicable, as follows:

<u>Name and Post Office Address</u>	<u>Amount</u>
-------------------------------------	---------------

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Small Estate Affidavit

(04/28/15) CCP N608 B

Class 3: debts due the United States, as follows:

<u>Name and Post Office Address</u>	<u>Amount</u>
-------------------------------------	---------------

Class 4: money due employees of the decedent of not more than \$800 for each claimant for services rendered within four (4) months prior to the decedent's death and expenses attending the last illness, as follows:

<u>Name and Post Office Address</u>	<u>Amount</u>
-------------------------------------	---------------

Class 5: money and property received or held in trust by the decedent which cannot be identified or traced, as follows:

<u>Name and Post Office Address</u>	<u>Amount</u>
-------------------------------------	---------------

Class 6: debts due the State of Illinois and any county, township, city, town, village, or school district located within Illinois, as follows:

<u>Name and Post Office Address</u>	<u>Amount</u>
-------------------------------------	---------------

Class 7: all other claims, as follows:

<u>Name and Post Office Address</u>	<u>Amount</u>
-------------------------------------	---------------

7.5 I understand that all valid claims against the decedent's estate described in paragraph 7 must be paid by me from the decedent's estate before any distribution is made to any heir or legatee. I further understand that the decedent's estate should pay all claims in the order set forth above, and if the decedent's estate is insufficient to pay the claims in any one class, the claims in that class shall be paid pro rata.

8. There is no known unpaid claimant or contested claim against the decedent, except as stated in paragraph 7.
9. (a) The names and places of residence of any surviving spouse, minor child(ren) and adult dependent* child(ren) of the decedent are as follows:

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 2 of 4

Small Estate Affidavit

(04/28/15) CCP N608 C

<u>Name and Relationship</u>	<u>Place of Residence</u>	<u>Age of Minor Child</u>
------------------------------	---------------------------	---------------------------

(*Note: An adult dependent child is one who is unable to maintain him/herself and is likely to become a public charge.)

- (b) The award allowable to the surviving spouse of a decedent who was an Illinois resident is \$ _____ (\$20,000 plus \$10,000 multiplied by the number of minor children and adult dependent children who resided with the surviving spouse at the time of decedent's death. If any such child(ren) did not reside with the surviving spouse at the time of the decedent's death, so indicate.)
 - (c) If there is no surviving spouse, the award allowable to minor children and adult dependent children of a decedent who was an Illinois resident is \$ _____ (\$20,000 plus \$10,000 multiplied by the number of minor children and adult dependent children), to be divided among them in equal shares.
10. (a) The decedent left no will. The names, places of residence and relationships of the decedent's heirs, and the portion of the estate to which each heir is entitled under the law where decedent died intestate are as follows:

<u>Name, Relationship and Place of Residence</u>	<u>Age of Minor</u>	<u>Portion of Estate</u>
--	-------------------------	------------------------------

OR

- (b) The decedent left a will, which has been filed with the clerk of an appropriate court. A certified copy of the will on file is attached. To the best of my knowledge and belief, the will on file is the decedent's last will and was signed by the decedent and the attesting witnesses as required by law and would be admissible to probate. The names and places of residence of the legatees and the portion of the estate, if any, to which each legatee is entitled are as follows:

<u>Name, Relationship and Place of Residence</u>	<u>Age of Minor</u>	<u>Portion of Estate</u>
--	-------------------------	------------------------------

Strike either 10(a) or 10(b).

- (c) Affiant is unaware of any dispute or potential conflict as to the heirship or will of the decedent.
- 10.3 My relationship to the decedent or the decedent's estate is as follows: _____.
- 10.5 I understand that the decedent's estate must be distributed first to satisfy claims against the decedent's estate as set forth in paragraph 7.5 of this affidavit before any distribution is made to any heir or legatee. By signing this affidavit, I agree to indemnify and hold harmless all creditors of the decedent's estate, the decedent's heirs and legatees, and other persons, corporations, or financial institutions relying upon this affidavit who incur any loss because of reliance on this affidavit, up to the amount lost because of any act or omission by me. I further understand that any person, corporation, or financial institution recovering under this indemnification provision shall be entitled to reasonable attorney's fees and the expenses of

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Small Estate Affidavit

(04/28/15) CCP N608 D

recovery.

- 11. After payment by me from the decedent's estate of all debts and expenses listed in paragraph 7, any remaining property described in paragraph 6 of this affidavit should be distributed as follows:

<u>Name</u>	<u>Specific Sum or Property to be Distributed</u>
-------------	---

The foregoing statement is made under the penalties of perjury*.

Signature of Affiant

Signed and sworn before me on _____, 20_____

(Notary Seal)

Notary Public

*(Note: A fraudulent statement made under the penalties of perjury is perjury, as defined in Section 32-2 of the Criminal Code of 2012.)

(c) Appointment of Agent. If safe deposit access is involved or if sale of any personal property is desirable to facilitate distribution pursuant to the small estate affidavit, the affiant under the small estate affidavit may in writing appoint one or more persons as the affiant's agent for that purpose. The agent shall have power, without court approval, to gain access to sell, and distribute the property in the manner specified in paragraphs 7.5 and 11 of the affidavit; and the payment, delivery, transfer, access or issuance shall be made or granted to or on the order of the agent. The affiant may appoint himself or herself as the designated representative to exercise the powers and perform the duties of an agent described in this subsection (c).

(d) Reliance and Release. Any person, corporation, or financial institution who acts in good faith reliance on a copy of a document purporting to be a small estate affidavit that is substantially in compliance with subsection (b) of the Section shall be fully protected and released upon payment, delivery, transfer, access or issuance pursuant to such a document to the same extent as if the payment, delivery, transfer, access or issuance had been made or granted to the representative of the estate. Such person, corporation, or financial institution is not required to see to the application or disposition of the property; but each person to whom a payment, delivery, transfer, access or issuance is made or given is answerable therefor to any person having a prior right and is accountable to any representative of the estate.

(e) Distributions pursuant to an affidavit substantially in the form set forth in subsection (b) of the Section may be made to the affiant, if so specified in paragraph 11, notwithstanding the disclosure of known unpaid debts. The affiant, acting on behalf of the decedent's estate, is obligated to pay all valid claims against the decedent's estate before any distribution is made to any heir or legatee. The affiant signing the small estate affidavit prepared pursuant to subsection (b) of this Section shall indemnify and hold harmless all creditors, heirs, and legatees of the decedent and other persons, corporations, or financial institutions relying upon the affidavit who incur loss because of such reliance. That indemnification shall only be up to the amount lost because of the act or omission of the affiant. Any person, corporation, or financial institution recovering under this subsection (e) shall be entitled to reasonable attorney's fees and the expenses of recovery.

(f) The affiant of a small estate affidavit who is a non-resident of Illinois submits himself or herself to the jurisdiction of Illinois courts for all matters related to the preparation or use of the affidavit. The affidavit shall provide the name, address, and phone number of a person whom the affiant names as his agent for service of process. If no such person is named or if, for any reason, service on the named person cannot be effectuated, the clerk of the circuit court of the county or judicial circuit of which the decedent was a resident at the time of his death shall be the agent for service of process.

(g) Any action properly taken under this Section, as amended by Public Act 93-877, on or after August 6, 2004 (the effective date of Public Act 93-877) is valid regardless of the date of death of the decedent.

(h) The changes made by this amendatory Act of the 96th General Assembly apply to a decedent whose date of death is on or after the effective date of this amendatory Act of the 96th General Assembly.

(i) The changes made by this amendatory Act of the 98th General Assembly apply to a decedent whose date of death is on or after the effective date of this amendatory Act of the 98th General Assembly.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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2. [2.42] DuPage County

SMALL ESTATE AFFIDAVIT Page 1 of 3 3764 (Rev. 7/15)
755 ILCS 5/25-1

Payment or delivery of small estate of decedent upon affidavit

(a) When any person, corporation, or financial institution (1) indebted to or holding personal estate of a decedent, (2) controlling the right of access to the decedent's safe deposit box, or (3) acting as registrar or transfer agent of any evidence of interest, indebtedness, property or right is furnished with a small estate affidavit in substantially the form hereinafter set forth, that person, corporation, or financial institution shall pay the indebtedness, grant access to the safe deposit box, deliver the personal estate or transfer or issue the evidence of interest, indebtedness, property or right to persons and in the manner specified in the affidavit or to an agent appointed as hereinafter set forth.

STATE OF ILLINOIS **SMALL ESTATE AFFIDAVIT** **COUNTY OF DU PAGE**

I _____ on oath state:

1. (a) my post office address is _____
 (b) my residence address is _____
 (c) I understand, if I am an out-of-state resident, I submit myself to the jurisdiction of Illinois courts for all matters related to the preparation and use of this affidavit. My agent for service of process in Illinois is:
 Name: _____
 Address: _____
 City/State/Zip: _____
 Telephone: _____

I understand that if no person is named above as my agent for service or, if for any reason, service on the named person cannot be effectuated, the Clerk of the 18th Judicial Circuit Court of DuPage County is recognized by Illinois law as my agent for service of process.

2. The decedent's name is _____ ;
 3. The date of the decedent's death was _____, and I have attached a copy of the death certificate hereto.
 4. The decedent's place of residence immediately before his death was _____ ;

5. No letters of office are now outstanding on the decedent's estate and no petition for letters is contemplated or pending in Illinois or in any other jurisdiction, to my knowledge;

6. The gross value of the decedent's entire personal estate, including the value of all property passing to any party either by intestacy or under a will, does not exceed \$100,000. (list each asset, e.g., cash, stock and its fair market value):

7. (a) All of the decedent's funeral expenses and other debts have been paid, or
 (b) All of the decedent's known unpaid debts are listed and classified as follows (include the name, post office address, and amount)
 Class 1: funeral and burial expenses, which include reasonable amounts paid for a burial space, crypt, or niche; a marker on the burial space; and care of the burial space, crypt, or niche; expenses of administration; and statutory custodial claims as follows: _____
 Class 2: the surviving spouse's award or child's award, if applicable, as follows: _____

 Class 3: debts due the United States, as follows: _____

 Class 4: money due employees of the decedent of not more than \$800 for each claimant for services rendered within 4 months prior to the decedent's death and expenses attending the last illness, as follows: _____

 Class 5: money and property received or held in trust by the decedent which cannot be identified or traced, as follows: _____

 Class 6: debts due the State of Illinois and any county, township, city, town, village, or school district located within Illinois, as follows: _____

 Class 7: all other claims, as follows: _____

(Strike either 7(a) or 7(b)).

**CHRIS KACHIROUBAS, CLERK OF THE 18TH JUDICIAL CIRCUIT® COURT
 WHEATON, ILLINOIS 60187-0707**

7.5. I understand that all valid claims against the decedent's estate described in paragraph 7 must be paid by me from the decedent's estate before any distribution is made to any heir or legatee. I further understand that the decedent's estate should pay all claims in the order set forth above, and if the decedent's estate is insufficient to pay the claims in any one class, the claims in that class shall be paid pro rata.

8. There is no known unpaid claimant or contested claim against the decedent, except as stated in paragraph 7.

9. (a) The names and places of residence of any surviving spouse, minor children and adult dependant* children of the decedent are as follows:

NAME AND RELATIONSHIP	PLACE OF RESIDENCE	AGE OF MINOR CHILD
-----------------------	--------------------	--------------------

*(NOTE: An adult dependant child is one who is unable to maintain himself and is likely to become a public charge.)

(b) the award allowable to the surviving spouse of a decedent who was an Illinois resident is \$ _____ (\$20,000, plus \$10,000 multiplied by the number of minor children and adult dependant children, who resided with the surviving spouse at the time of the decedent's death. If any such child did not reside with the surviving spouse at the time of the decedent's death, so indicate.

(c) If there is no surviving spouse, the award allowable to the minor children and adult dependant children of the decedent who was an Illinois resident is \$ _____ (\$20,000 plus \$10,000 multiplied by the number of minor children and adult dependant children), to be divided among them in equal shares.

10. (a) The decedent left no will. The names, places of residence and relationships of the decedent's heirs, and the portion of the estate to which each heir is entitled under the law where the decedent died intestate are as follows:

NAME, RELATIONSHIP & PLACE OF RESIDENCE	AGE OF MINOR CHILD	PORTION OF ESTATE
---	--------------------	-------------------

OR (b) the decedent left a will, which has been filed with the Clerk of an appropriate court. A certified copy of the will on file is attached. To the best of my knowledge and belief the will on file is the decedent's last will and was signed by the decedent and the attesting witnesses as required by law and would be admissible to probate. The names and places of residence of the legatees and the portion of the estate, if any, to which each legatee is entitled are as follows:

NAME, RELATIONSHIP & PLACE OF RESIDENCE	AGE OF MINOR CHILD	PORTION OF ESTATE
---	--------------------	-------------------

(~~strike either~~10(a) or 10(b)).

(c) Affiant is unaware of any dispute or potential conflict as to the heirship or will of the decedent.

10.3 My relationship to the decedent or the decedent's estate is as follows:

10.5 I understand that the decedent's estate must be distributed first to satisfy claims against the decedent's estate as set forth in paragraph 7.5 of this affidavit before any distribution is made to any heir or legatee. By signing this affidavit, I agree to indemnify and hold harmless all creditors of the decedent's estate, the decedent's heirs and legatees, and other persons, corporations, or financial institutions relying upon this affidavit who incur any loss because of reliance on this affidavit, up to the amount lost because of any act or omission by me. I further understand that any person, corporation, or financial institution recovering under this indemnification provision shall be entitled to reasonable attorney's fees and the expenses of recovery.

CHRIS KACHIROUBAS, CLERK OF THE 18TH JUDICIAL CIRCUIT© COURT
WHEATON, ILLINOIS 60187-0707

11. After payment by me from the decedent's estate of all debts and expenses listed in paragraph 7, any remaining property described in paragraph 6 of this affidavit should be distributed as follows:

NAME	SPECIFIC SUM OR PROPERTY TO BE DISTRIBUTED
------	--

The foregoing statement is made under the penalties of perjury*.

Signed and sworn before me on (insert date).

Signature of Affiant

Date

Notary Public

***(Note: A fraudulent statement made under the penalties of perjury is perjury as defined in Section 32-2 of the Criminal Code of 2012.)**

(c) Appointment of Agent. If safe deposit access is involved or if sale of any personal property is desirable to facilitate distribution pursuant to the small estate affidavit, the affiant under the small estate affidavit may in writing appoint one or more persons as the affiant's agent for that purpose. The agent shall have power without court approval, to gain access to, sell and distribute the property in the manner specified in paragraphs 7.5 and 11 of the affidavit; and the payment, delivery, transfer, access or issuance shall be made or granted to or on the order of the agent. The affiant may appoint himself or herself as the designated representative to exercise the powers and perform the duties of an agent described in this subsection (c).

(d) Reliance and Release. Any person, corporation, or financial institution who acts in good faith reliance on a copy of a document purporting to be a small estate affidavit that is substantially in compliance with subsection (b) of this Section shall be fully protected and released upon payment, delivery, transfer, access or issuance pursuant to such a document to the same extent as if the payment, delivery, transfer, access or issuance had been made or granted to the representative of the estate. Such person, corporation, or financial institution is not required to see to the application or disposition of the property; but each person to whom a payment, delivery, transfer, access or issuance is made or given is answerable therefor to any person having a prior right and is accountable to any representative of the estate.

(e) Distributions pursuant to an affidavit substantially in the form set forth in subsection (b) of this Section may be made to the affiant, if so specified in paragraph 11, notwithstanding the disclosure of known unpaid debts. The affiant, acting on behalf of the decedent's estate, is obligated to pay all valid claims against the decedent's estate before any distribution is made to any heir or legatee. The affiant signing the small estate affidavit prepared pursuant to subsections (b) of this Section shall indemnify and hold harmless all creditors, heirs, and legatees of the decedent and other persons, corporations, or financial institutions relying upon the affidavit who incur loss because of such reliance. That indemnification shall only be up to the amount lost because of the act or omission of the affiant. Any person, corporation, or financial institution recovering under this subsection (e) shall be entitled to reasonable attorney's fees and the expenses of recovery.

(f) The affiant of a small estate affidavit who is a non-resident of Illinois submits himself or herself to the jurisdiction of Illinois courts for all matters related to the preparation or use of the affidavit. The affidavit shall provide the name, address and phone number of the person who the affiant names as his agent for service of process. If no such person is named or if, for any reason, service on the named person cannot be effectuated, the clerk of the circuit court of the county or judicial circuit of which the decedent was a resident at the time of his/her death shall be the agent for service of process.

(g) Any action properly taken under this Section, as amended by Public Act 93-877, on or after August 6, 2004 (the effective date of Public Act 93-877) is valid regardless of the date of death of the decedent.

(h) The changes made by this amendatory Act of the 96th general Assembly apply to a decedent whose date of death is on or after the effective date of this amendatory Act of the 96th General Assembly.

(i) The changes made by this amendatory Act of the 98th General Assembly apply to a decedent whose date of death is on or after the effective date of this amendatory Act of the 98th General Assembly.

**CHRIS KACHIROUBAS, CLERK OF THE 18TH JUDICIAL CIRCUIT© COURT
WHEATON, ILLINOIS 60187-0707**

3. [2.43] Illinois Secretary of State

MARK VON NIDA
CLERK OF THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT



Madison County Courthouse
155 N. Main St., Suite 120
Edwardsville, IL 62025
(618) 692-6240
(Fax) 692-0676
www.co.madison.il.us

NOTICE

The Madison County Circuit Clerk's office provides the Small Estates Affidavit to all individuals needing to dispose of a decedent's estate which does not exceed \$100,000.00. Please complete the affidavit to the best of your ability and knowledge. Once the affidavit has been completed, deliver the affidavit to the institute from which it is requested.

The Circuit Clerk's office provides this form as a service to the public. This office is prohibited from issuing legal advice; therefore, we are unable to advise you as to instructions to complete this affidavit. If you have questions pertaining to the completion of this form you may contact an attorney or refer to the Illinois Compiled Statute 755 ILCS 5/25-1. A copy of this statute is attached for your convenience.

AN AFFIDAVIT TO JESSE WHITE, THE SECRETARY OF THE STATE OF ILLINOIS, PURSUANT TO 755 ILCS 5/ART. XXV OF THE PROBATE ACT, ILLINOIS COMPILED STATUTES, AS AMENDED BY PUBLIC ACT 98-0836 (EFF. 1-1-15).

STATE OF ILLINOIS

COUNTY OF _____

SMALL ESTATE AFFIDAVIT

I, _____ (name of affiant), on oath state:

- 1. (a) My post office address is: _____
- (b) My residence address is: _____; and
- (c) I understand that if I am an out-of-state resident I submit myself to the jurisdiction of Illinois courts for all matters related to the preparation and use of this affidavit. My agent for service of process in Illinois is:

NAME: _____ ADDRESS: _____
 CITY: _____ TELEPHONE: _____

I understand that if no person is named above as my agent for service or, if for any reason, service on the named person cannot be effectuated, the Clerk of the Circuit Court of _____ (County) _____ (Judicial Circuit) Illinois is recognized by Illinois law as my agent for service of process.

- 2. The decedent's name is _____
- 3. The date of the decedent's death was _____ and I have attached a copy of the death certificate hereto.
- 4. The decedent's place of residence immediately before his/her death was _____
- 5. No letters of office are now outstanding on the decedent's estate, and no petition for letters is contemplated or pending in Illinois or in any other jurisdiction, to my knowledge.
- 6. The gross value of the decedent's entire personal estate, including the value of all property passing to any party either by intestacy or under a will, does not exceed \$100,000 in value and consists of the following (list each asset and its fair market value):

Including vehicle(s) described below:

Make of Vehicle	Body Type	Year Model	Vehicle Identification Number

Last licensed in the State of Illinois in (Year) _____ License Plate Number(s) _____

- 7. Mark (X) either (a) or (b): (a) All the decedent's funeral expenses and other debts have been paid, or (b) All the decedent's known unpaid debts are listed and classified as follows:

Class 1: Funeral and burial expenses, which include reasonable amounts paid for a burial space, crypt, or niche; a marker on the burial space; and care of the burial space, crypt, or niche; expenses of administration; and statutory custodial claims:

Name _____
 Post Office Address _____ Amount \$ _____

Class 2: Surviving spouse's award or child's award, if applicable:

Name _____
 Post Office Address _____ Amount \$ _____

Class 3: Debts due the United States:

Name _____
 Post Office Address _____ Amount \$ _____

Class 4: Money due employees of the decedent of not more than \$800 for each claimant for services rendered within four (4) months prior to the decedent's death and expenses attending the last illness:

Name _____
 Post Office Address _____ Amount \$ _____

Class 5: Money and property received or held in trust by the decedent that cannot be identified or traced:

Name _____
 Post Office Address _____ Amount \$ _____

Class 6: Debts due the State of Illinois and any county, township, city, town, village, or school district located within Illinois:

Name _____
 Post Office Address _____ Amount \$ _____

Class 7: All other claims:

Name _____
 Post Office Address _____ Amount \$ _____

7.5 I understand that all valid claims against the decedent's estate described in paragraph 7 must be paid by me from the decedent's estate before any distribution is made to any heir or legatee. I further understand that the decedent's estate should pay all claims in the order set forth above, and if the decedent's estate is insufficient to pay the claims in any one class, the claims in that class shall be paid pro rata.

8. There is no known unpaid claimant or contested claim against the decedent except as stated in paragraph 7.

9. (a) The names and places of residence of any surviving spouse, minor children and adult dependent* children of the decedent are as follows:

Name and Relationship	Place of Residence	Age of Minor Child

*(Note: An adult dependent child is one who is unable to maintain himself and is likely to become a public charge.)

- (b) The award allowable to the surviving spouse of a decedent who was an Illinois resident is \$ _____ (\$20,000, plus \$10,000 multiplied by the number of minor children and adult dependent children who resided with the surviving spouse at the time of the decedent's death. If any such child did not reside with the surviving spouse at the time of the decedent's death, so indicate in 9(a)).
- (c) If there is no surviving spouse, the award allowable to the minor children and adult dependent children of a decedent who was an Illinois resident is \$ _____ (\$20,000, plus \$10,000 multiplied by the number of minor children and adult dependent children), to be divided among them in equal shares.

10. Mark (X) either 10(a) or 10(b):

(a) The decedent left no will. The names, places of residence and relationships of the decedent's heirs, and the portion of the estate to which each heir is entitled under the law where decedent died intestate are as follows:

Name, Relationship and Place of Residence	Age of Minor	Portion of Estate

(b) The decedent left a will, which has been filed with the clerk of an appropriate court. A certified copy of the will on file is attached. To the best of my knowledge and belief the will on file is the decedent's last will and was signed by the decedent and the attesting witnesses as required by law and would be admissible to probate. The names and places of residence of the legatees and the portion of the estate, if any, to which each legatee is entitled are as follows:

Name, Relationship and Place of Residence	Age of Minor	Portion of Estate

(c) Affiant is unaware of any dispute or potential conflict as to the heirship or will of the decedent.

10.3 My relationship to the decedent or the decedent's estate is: _____.

10.5 I understand that the decedent's estate must be distributed first to satisfy claims against the decedent's estate as set forth in paragraph 7.5 of this affidavit before any distribution is made to any heir or legatee. By signing this affidavit, I agree to indemnify and hold harmless all creditors of the decedent's estate, the decedent's heirs and legatees, and other persons, corporations, or financial institutions relying upon this affidavit who incur any loss because of reliance on this affidavit, up to the amount lost because of any act or omission by me. I further understand that any person, corporation, or financial institution recovering under this indemnification provision shall be entitled to reasonable attorney's fees and the expenses of recovery.

11. After payment by me from the decedent's estate of all debts and expenses listed in paragraph 7, any remaining property described in paragraph 6 of this affidavit should be transferred to (NAME) _____; (ADDRESS) _____; this affidavit is made to induce Jesse White, Secretary of State of Illinois, to issue a Certificate of Title to the vehicle to the assignee.

The foregoing statement is made under the penalties of perjury. (Note: A fraudulent statement made under the penalties of perjury is perjury, as defined in Section 32-2 of the Criminal Code of 2012.)

Signature of Affiant Date

Subscribed and sworn to before me this _____ day of _____.

Notary Public (SEAL)

SMALL ESTATES

(755 ILCS 5/25-1) (from Ch. 110 1/2, par. 25-1)
 Sec. 25-1. Payment or delivery of small estate of decedent upon affidavit.

(a) When any person or corporation (1) indebted to or holding personal estate of a decedent, (2) controlling the right of access to decedent's safe deposit box or (3) acting as registrar or transfer agent of any evidence of interest, indebtedness, property or right is furnished with a small estate affidavit in substantially the form hereinafter set forth, that person or corporation shall pay the indebtedness, grant access to the safe deposit box, deliver the personal estate or transfer or issue the evidence of interest, indebtedness, property or right to persons and in the manner specified in paragraph 11 of the affidavit or to an agent appointed as hereinafter set forth.

(b) Small Estate Affidavit
 I, (name of affiant) , on oath state:
 1. (a) My post office address is: ;
 (b) My residence address is: ; and
 (c) I understand that, if I am an out-of-state

resident, I submit myself to the jurisdiction of Illinois courts for all matters related to the preparation and use of this affidavit. My agent for service of process in Illinois is:

NAME.....
 ADDRESS.....
 CITY.....
 TELEPHONE (IF ANY).....

I understand that if no person is named above as my agent for service or, if for any reason, service on the named person cannot be effectuated, the clerk of the circuit court of(County) (Judicial Circuit) Illinois is recognized by Illinois law as my agent for service of process.

2. The decedent's name is ;
 3. The date of the decedent's death was , and I

have attached a copy of the death certificate hereto.
 4. The decedent's place of residence immediately before his death was ;

5. No letters of office are now outstanding on the decedent's estate and no petition for letters is contemplated or pending in Illinois or in any other jurisdiction, to my knowledge;

6. The gross value of the decedent's entire personal estate, including the value of all property passing to any party either by intestacy or under a will, does not exceed \$100,000. (Here, list each asset, e.g., cash, stock, and its fair market value.);

7. (a) All of the decedent's funeral expenses have been paid, or (b) The amount of the decedent's unpaid funeral expenses and the name and post office address of each person entitled thereto are as follows:

Name and post office address	Amount
------------------------------	--------

(Strike either 7(a) or 7(b)).

8. There is no known unpaid claimant or contested claim against the decedent, except as stated in paragraph 7.

9. (a) The names and places of residence of any surviving spouse, minor children and adult dependent* children of the decedent are as follows:

Name and Relationship	Place of Residence	Age of minor child
--------------------------	-----------------------	-----------------------

*(Note: An adult dependent child is one who is unable to maintain himself and is likely to become a public charge.)

(b) The award allowable to the surviving spouse of a decedent who was an Illinois resident is \$..... (\$10,000, plus \$5,000 multiplied by the number of minor children and adult dependent children who resided with the surviving spouse at the time of the decedent's death. If any such child did not reside with the surviving spouse at the time of the decedent's death, so indicate).

(c) If there is no surviving spouse, the award allowable to the minor children and adult dependent children of a decedent who was an Illinois resident is \$..... (\$10,000, plus \$5,000 multiplied by the number of minor children and adult dependent children), to be divided among them in equal shares.

10. (a) The decedent left no will. The names, places of residence and relationships of the decedent's heirs, and the portion of the estate to which each heir is entitled under the law where decedent died intestate are as follows:

Name, relationship and place of residence	Age of minor	Portion of Estate
--	-----------------	----------------------

OR

(b) The decedent left a will, which has been filed with the clerk of an appropriate court. A certified copy of the will on file is attached. To the best of my knowledge and belief the will on file is the decedent's last will and was signed by the decedent and the attesting witnesses as required by law and would be admissible to probate. The names and places of residence of the legatees and the portion of the estate, if any, to which each legatee is entitled are as follows:

Name, relationship and place of residence	Age of minor	Portion of Estate
--	-----------------	----------------------

(Strike either 10(a) or 10(b)).

(c) Affiant is unaware of any dispute or potential conflict as to the heirship or will of the decedent.

11. The property described in paragraph 6 of this affidavit should be distributed as follows:

Name	Specific sum or property to be distributed
------	--

The foregoing statement is made under the penalties of perjury*.

.....
Signature of Affiant

*(Note: A fraudulent statement made under the penalties of perjury is perjury, as defined in Section 32-2 of the Criminal Code of 1961.)

(c) Appointment of Agent. If safe deposit access is

involved or if sale of any personal property is desirable to facilitate distribution pursuant to the small estate affidavit, all persons named in paragraph 11 of the small estate affidavit (excluding minors and unascertained or disabled persons) may in writing appoint one or more persons as their agent for that purpose. The agent shall have power, without court approval, to gain access to, sell, and distribute the property for the benefit of all persons named in paragraph 11 of the affidavit; and the payment, delivery, transfer, access or issuance shall be made or granted to or on the order of the agent.

(d) Release. Upon payment, delivery, transfer, access or issuance pursuant to a properly executed affidavit, the person or corporation is released to the same extent as if the payment, delivery, transfer, access or issuance had been made or granted to the representative of the estate. Such person or corporation is not required to see to the application or disposition of the property; but each person to whom a payment, delivery, transfer, access or issuance is made or given is answerable therefor to any person having a prior right and is accountable to any representative of the estate.

(e) The affiant signing the small estate affidavit prepared pursuant to subsection (b) of this Section shall indemnify and hold harmless all creditors and heirs of the decedent and other persons relying upon the affidavit who incur loss because of such reliance. That indemnification shall only be up to the amount lost because of the act or omission of the affiant. Any person recovering under this subsection (e) shall be entitled to reasonable attorney's fees and the expenses of recovery.

(f) The affiant of a small estate affidavit who is a non-resident of Illinois submits himself or herself to the jurisdiction of Illinois courts for all matters related to the preparation or use of the affidavit. The affidavit shall provide the name, address, and phone number of a person whom the affiant names as his agent for service of process. If no such person is named or if, for any reason, service on the named person cannot be effectuated, the clerk of the circuit court of the county or judicial circuit of which the decedent was a resident at the time of his death shall be the agent for service of process.

(g) Any action properly taken under this Section, as amended by Public Act 93-877, on or after August 6, 2004 (the effective date of Public Act 93-877) is valid regardless of the date of death of the decedent.

(Source: P.A. 93-877, eff. 8-6-04; 94-57, eff. 6-17-05.)

4. [2.44] Lake County

SMALL ESTATE AFFIDAVIT (\$100,000 and under)

I, _____ on oath state:
 (Name of Affiant)

1. (a) My post office address is: _____
- (b) My residence address is: _____
- (c) I understand that, if I am an out-of-state resident, I submit myself to the jurisdiction of Illinois courts for all matters related to the preparation and use of this affidavit. My agent for service of process in Illinois is:

Name: _____ Address: _____

City: _____ Phone (if any) _____

I understand that if no person is named above as my agent for service, or if for any reason, service on the named person cannot be effectuated, the Clerk of the Circuit Court of Lake County, 19th Judicial Circuit, Illinois is recognized by Illinois law as my agent for service of process..

2. The decedent's name is: _____
3. The date of decedent's death was _____, and I have attached a copy of the death certificate hereto.
4. The decedent's place of residence immediately before his death was: _____
 _____;
5. No letters of office are now outstanding on the decedent's estate and no petition for letters is contemplated or pending in Illinois or in any other jurisdiction, to my knowledge;
6. The gross value of the decedent's entire personal estate, including the value of all property passing to any party either by intestacy or under a will, does not exceed \$100,000. (Here, list each asset, e.g. cash, stock, and its fair market value). (Attach additional pages if necessary).

Name (Type of asset)	Amount and/or Description
_____	_____
_____	_____
_____	_____

7. (a) All of the decedent's funeral expenses and other debts have been paid, or
- (b) All of the decedent's known unpaid debts are listed and classified as follows (include the name, post office address and amount)
 Class 1: funeral and burial expenses, which include reasonable amounts paid for a burial space, crypt, or niche; a marker on the burial space; and care of the burial space, crypt, or niche; expenses of administration; and statutory custodial claims as follows:

Class 2: the surviving spouse's award or child's award, if applicable, as follows:

Class 3: debts due the United States, as follows:

Class 4: money due employees of the decedent of not more than \$800 for each claimant for services rendered within 4 months prior to the decedent's death and expenses attending the last illness, as follows:

Class 5: money and property received or held in trust by the decedent which cannot be identified or traced, as follows:

Class 6: debts due the State of Illinois and any county, township, city, town, village, or school district located within Illinois, as follows:

Class 7: all other claims, as follows:

(Strike either 7(a) or 7(b)). (Attach additional pages if necessary).

7.5 I understand that all valid claims against the decedent's estate described in paragraph 7 must be paid by me from the decedent's estate before any distribution is made to any heir or legatee. I further understand that the decedent's estate should pay all claims in the order set forth above, and if the decedent's estate is insufficient to pay the claims in any one class, the claims in that class shall be paid pro rata.

8. There is no known unpaid claimant or contested claim against the decedent, except as stated in paragraph 7.

9. (a) The names and places of residence of any surviving spouse, minor children and adult dependent* children of the decedent are as follows:

Name and Relationship	Place of Residence	Age of Minor Child
_____	_____	_____
_____	_____	_____
_____	_____	_____

* Note: An adult dependent child is one who is unable to maintain himself and is likely to become a public charge.

(b) The award allowable to the surviving spouse of a decedent who was an Illinois resident is \$ _____ (\$20,000 plus \$10,000 multiplied by the number of minor children and adult dependent children who resided with the surviving spouse at the time of the decedent's death. If any such child did not reside with the surviving spouse at the time of the decedent's death, so indicate).

(c) If there is no surviving spouse, the award allowable to the minor children and adult dependent children of a decedent who was an Illinois resident is: \$ _____ (\$20,000 plus \$10,000 multiplied by the number of minor children and adult dependent children), to be divided among them in equal shares.

10. (a) The decedent left no will. The names, places of residence and relationships of the decedent's heirs, and the portion of the estate to which each heir is entitled under the law where decedent died intestate are as follows: (Attach additional pages if necessary).

Name, relationship and place of residence	Age of Minor Child	Portion of Estate
_____	_____	_____
_____	_____	_____
_____	_____	_____

(b) The decedent left a will, which has been filed with the clerk of an appropriate court. A certified copy of the will on file is attached. To the best of my knowledge and belief the will on file is the decedent's last will and was signed by the decedent and the attesting witnesses as required by law and would be admissible to probate. The names and places of residence of the legatees and the portion of the estate, if any, to which each legatee is entitled are as follows: (Attach additional pages if necessary).

Name, relationship and place of residence	Age of Minor Child	Portion of Estate
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Strike either 10(a) or 10(b)).

(c) Affiant is unaware of any dispute or potential conflict as to the heirship or will of decedent.

10.3 My relationship to the decedent or the decedent's estate is as follows: _____

10.5 **I understand that the decedent's estate must be distributed first to satisfy claims against the decedent's estate as set forth in paragraph 7.5 of this affidavit before any distribution is made to any heir or legatee. By signing this affidavit, I agree to indemnify and hold harmless all creditors of the decedent's estate, the decedent's heirs and legatees, and other persons, corporations, or financial institutions relying upon this affidavit who incur any loss because of reliance on this affidavit, up to the amount lost because of any act or omission by me. I further understand that any person, corporation, or financial institution recovering under this indemnification provision shall be entitled to reasonable attorney's fees and the expenses of recovery.**

11. After payment by me from the decedent's estate of all debts and expenses listed in paragraph 7, any remaining property described in paragraph 6 of this affidavit should be distributed as follows: (Attach additional pages if necessary).

Name	Specific sum or property to be distributed
_____	_____
_____	_____
_____	_____

The foregoing statement is made under the penalties of perjury*.

_____ Affiant

Signed and sworn before me on _____ (insert date)

_____ (Notary Public)

*(Note: A fraudulent statement made under the penalties of perjury is perjury, as defined in Section 32-2 of the Criminal Code of 2012).

5. [2.45] Will County

Affidavit to Obtain Payment or Delivery of the Assets of a Decedent Whose Estate Does Not Exceed One Hundred Thousand Dollars

755 ILCS 5/25-1
5/25-1. Payment or delivery of small estate of decedent upon affidavit.

(a) When any person, corporation or financial institution (1) indebted to or holding personal estate of a decedent, (2) controlling the right of access to decedent's safe deposit box or (3) acting as registrar or transfer agent of any evidence of interest, indebtedness, property or right is furnished with a small estate affidavit in substantially the form hereinafter set forth, that person, corporation or financial institution shall pay the indebtedness, grant access to the safe deposit box, deliver the personal estate or transfer or issue the evidence of interest, indebtedness, property or right to persons and in the manner specified in the affidavit or to an agent appointed as hereinafter set forth.

STATE OF ILLINOIS **PRINT** **CLEAR** COUNTY OF WILL

SMALL ESTATE AFFIDAVIT

I, _____ on oath state:

- 1) (a) my post office address is _____
 (b) my residence address is _____
 (c) I understand, if I am an out-of-state resident, I submit myself to the jurisdiction of Illinois courts for all matters related to the preparation and use of this affidavit. My agent for service of process in Illinois is:
 NAME _____
 ADDRESS _____
 CITY & ZIP CODE _____
 TELEPHONE (if any) _____
 I understand that if no person is named above as my agent for service, or if for any reason, service on the named person cannot be effectuated, the Clerk of the Circuit Court of the 12th Judicial Circuit, Will County, Illinois is recognized by Illinois law as my agent for the service of process.
- 2) The decedent's name is _____.
- 3) The date of the decedent's death was _____, and I have attached a copy of the death certificate hereto.
- 4) The decedent's place of residence immediately before death was _____.
- 5) No letters of office are now outstanding on the decedent's estate and no petition for letters is contemplated or pending in Illinois, or in any other jurisdiction, to my knowledge.
- 6) The gross value of the decedent's entire personal estate, including the value of all property passing to any party either by intestacy or under a will, does not exceed \$100,000.00 (list each asset, e.g., cash, stock and its fair market value): _____

 (attach a separate sheet if necessary).
- 7) (a) All of the decedent's funeral expenses and other debts have been paid, **OR** (b) all of the decedent's known unpaid debts are listed and classified as follows (include the name, post office address and amount):
 [Strike either (a) or (b)]

NAME AND POST OFFICE ADDRESS	AMOUNT

Class 1: funeral and burial expenses, which include reasonable amounts paid for a burial space, crypt, or niche; a marker on the burial space; and care of the burial space, crypt or niche; expenses of administration; and statutory custodial claims as follows: _____

(attach a separate sheet if necessary).

Class 2: the surviving spouse's award or child's award, if applicable, as follows: _____

(attach a separate sheet if necessary).

(SEE REVERSE SIDE)

Class 3: debts due to the United States, as follows:

(attach a separate sheet if necessary).

Class 4: money due employees of the decedent of not more than \$800.00 for each claimant for services rendered within four (4) months prior to the decedent's death and expenses attending the last illness, as follows:

(attach a separate sheet if necessary).

Class 5: money and property received or held in trust by the decedent which cannot be identified or traced, as follows:

(attach a separate sheet if necessary).

Class 6: debts due the State of Illinois and any county, township, city, town, village or school district located within Illinois, as follows:

(attach a separate sheet if necessary).

Class 7: all other claims, as follows:

(attach a separate sheet if necessary).

7.5) I understand that all valid claims against the decedent's estate described in paragraph 7 must be paid by me from the decedent's estate before any distribution is made to any heir or legatee. I further understand that the decedent's estate should pay all claims in the order set forth above, and if the decedent's estate is insufficient to pay the claims in any one class, the claims in that class shall be paid pro rata.

8) There is no known unpaid claimant or contested claim against the decedent, except as stated in paragraph 7.

9) (a) The names and places of residence of any surviving spouse, minor children, and adult dependent* child(ren) of the decedent are as follows:

NAME AND RELATIONSHIP	PLACE OF RESIDENCE	AGE OF MINOR CHILD
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(b) The award allowable to the surviving spouse of a decedent who was an Illinois resident is \$ _____ (\$20,000.00 plus \$10,000.00 multiplied by the number of minor children and adult dependent children who resided with the surviving spouse at the time of the decedent's death. If any such child did not reside with the surviving spouse at the time of the decedent's death, so indicate.)

(*NOTE: An adult dependent child is one who is unable to maintain himself and is likely to become a public charge)

- (c) If there is no surviving spouse, the award allowable to the minor children and adult dependent children of a decedent who was an Illinois resident is \$ _____ (\$20,000.00 plus \$10,000.00 multiplied by the number of minor children and adult dependent children), to be divided among them in equal shares.
- 10) (a) The decedent left no will. The names, places of residence and relationships of the decedent's heirs, and the portion of the estate to which each heir is entitled under the law where the decedent died intestate are as follows:

NAME, RELATIONSHIP & PLACE OF RESIDENCE - AGE OF MINOR CHILD	PORTION OF THE ESTATE

OR:

- (b) the decedent left a will, which has been filed with the clerk of an appropriate court. A certified copy of the will on file is attached. To the best of my knowledge and belief the will on file is the decedent's last will and was signed by the decedent and the attesting witnesses as required by law and would be admissible to probate. The names and places of residence of the legatees and the portion of the estate, if any, to which each legatee is entitled are as follows:

NAME, RELATIONSHIP & PLACE OF RESIDENCE - AGE OF MINOR CHILD	PORTION OF THE ESTATE

[Strike either (a) or (b)]

- (c) Affiant is unaware of any dispute or potential conflict as to the heirship or will of the decedent.
- 10.3) My relationship to the decedent or the decedent's estate is as follows: _____

10.5) **I understand that the decedent's estate must be distributed first to satisfy claims against the decedent's estate as set forth in paragraph 7.5 of this affidavit before any distribution is made to any heir or legatee. By signing this affidavit, I agree to indemnify and hold harmless all creditors of the decedent's estate, the decedent's heirs and legatees, and other persons, corporations, or financial institutions relying upon this affidavit who incur any loss because of reliance on this affidavit, up to the amount lost because of any act or omission by me. I further understand that any person, corporation or financial institution recovering under this indemnification provision shall be entitled to reasonable attorney's fees and the expenses of recovery.**

- 11) After payment by me from the decedent's estate of all debts and expenses listed in paragraph 7, any remaining property described in paragraph 6 of this affidavit should be distributed as follows:

NAME	SPECIFIC SUM OR PROPERTY TO BE DISTRIBUTED

*The foregoing statement is made under the penalties of perjury.

Signed and Sworn before me on _____

Signature of Affiant

(Notary Public)

(SEE REVERSE SIDE)

(*NOTE: A fraudulent statement made under penalties of perjury is perjury as defined in section 32-2 of the Criminal Code of 2012)

(c) Appointment of Agent. If safe deposit access is involved or if sale of any personal property is desirable to facilitate distribution pursuant to the small estate affidavit, the affiant under the small estate affidavit may in writing appoint one or more persons as the affiant's agent for that purpose. The agent shall have power, without court approval, to gain access to, sell, and distribute the property in the manner specified in paragraph 7.5 and 11 of the affidavit, and the payment, delivery, transfer, access or issuance shall be made or granted to or on the order of the agent. The affiant may appoint himself or herself as the designated representative to exercise the powers and perform the duties of an agent described in this subsection (c).

(d) Reliance and Release. Any person, corporation or financial institution who acts in good faith reliance on a copy of a document purporting to be a small estate affidavit that is substantially in compliance with subsection (b) of this Section shall be fully protected and released upon payment, delivery, transfer or issuance pursuant to such a document to the same extent as if the payment, delivery, transfer, access or issuance had been made or granted to the representative of the estate. Such person, corporation, or financial institution is not required to see to the application or disposition of the property; but each person to whom a payment, delivery, transfer, access or issuance is made or given is answerable therefore to any person having a prior right and is accountable to any representative of the estate.

(e) Distributions pursuant to an affidavit substantially in the form set forth in subsection (b) of the Section may be made to the affiant, if so specified in paragraph 11, notwithstanding the disclosure of known unpaid debts. The affiant, acting on behalf of the decedent's estate, is obligated to pay all valid claims against the decedent's estate before any distribution is made to any heir or legatee. The affiant signing the small estate affidavit prepared pursuant to subsection (b) of this Section shall indemnify and hold harmless all creditors, heirs and legatees of the decedent and other persons, corporations or financial institutions relying upon the affidavit who incur loss because of such reliance. That indemnification shall only be up to the amount lost because of the act or omission of the affiant. Any person, corporation, or financial institution recovering under this subsection (e) shall be entitled to reasonable attorney's fees and the expenses of recovery.

(f) The affiant of a small estate affidavit who is a non-resident of Illinois submits himself or herself to the jurisdiction of Illinois courts for all matters related to the preparation or use of the affidavit. The affidavit shall provide the name, address, and phone number of a person who the affiant names as his agent for the service of process. If no such person is named or if, for any reason, service on the named person cannot be effectuated, the clerk of the circuit court of the county or judicial circuit of which the decedent was a resident at the time of his death shall be the agent for service of process.

(g) Any action properly taken under this Section, as amended by Public Act 93-877, on or after August 6, 2004 (the effective date of Public Act 93-877) is valid regardless of the date of death of the decedent.

(h) The changes made by this amendatory Act of the 96th General Assembly apply to a decedent whose date of death is on or after the effective date of this amendatory Act of the 96th General Assembly.

(i) The changes made by this amendatory Act of the 98th General Assembly apply to a decedent whose date of death is on or after the effective date of this amendatory Act of the 98th General Assembly.

(Source: P.A. 97-1150, eff. 1-25-13; 98-836, eff. 1-1-15.)

ANDREA LYNN CHASTEEN, CLERK OF THE CIRCUIT COURT OF WILL COUNTY

29C (page 4 of 4) (Revised 12/16)

B. [2.46] Affidavit of Heirship — Second Circuit

**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
_____ COUNTY**

IN RE: THE ESTATE OF _____)
 _____, Deceased.) No. _____

**AFFIDAVIT OF HEIRSHIP
SPOUSE/PARTNER AND/OR DESCENDANTS**

_____, on oath states:

1. The Decedent, died on _____ at the age of _____.
2. I am of legal age, I reside at _____
 I am a _____ (relationship) of the Decedent.
 I am not related to the Decedent, but have knowledge of Decedent's heirship as a result of the following:

3. The Decedent was never married.
 The Decedent was never a party to a civil union.
 The Decedent was married _____ (number of marriages).
 The Decedent was a party to a civil union _____ (number of civil unions).

The following is information with respect thereto:

Name of Spouse/Civil Partner	Marriage/Civil Partnership Terminated (By death or dissolution)	Predeceased Decedent - P
a. _____	_____	_____
b. _____	_____	_____
c. _____	_____	_____

4. No child was born or adopted by the Decedent.
 The following children, and no others, were born to or adopted by Decedent.

Name of Child	By Spouse/Partner Letter (From Section 3)	Minor - M Disabled - D	Predeceased P
a. _____	_____	_____	_____
b. _____	_____	_____	_____
c. _____	_____	_____	_____

d. _____
 5. The following children, and no others, were born to or adopted by each deceased child:

Deceased Child	Name of each Child of Deceased Child (Grandchild)	Minor - M Disabled - D	Predeceased P
a. _____	_____	_____	_____
b. _____	_____	_____	_____
c. _____	_____	_____	_____
d. _____	_____	_____	_____

6. The following children, and no others, were born to or adopted by each deceased grandchild:
 Deceased Grandchild Name of each Child of Deceased Grandchild (Great-Grandchild) Minor - M Disabled - D Predeceased P

a. _____	_____	_____	_____
b. _____	_____	_____	_____
c. _____	_____	_____	_____
d. _____	_____	_____	_____

7. Based on the foregoing, Decedent left surviving as his or her heirs the following, all of whom survived the Decedent, and in the absence of any indication of the contrary, are of legal age and mentally competent.

Name	Relationship to Decedent (Trace Relationship)
a. _____	_____
b. _____	_____
c. _____	_____
d. _____	_____
e. _____	_____

Date Affiant

Subscribed and sworn to before me this _____ (date).

Circuit Clerk or Notary Public

Name _____ PRO SE

Attorney Number _____

Attorney for _____

Address _____

City/State/Zip _____

Telephone Number _____

C. [2.47] Exhibit A — Petition for Probate**EXHIBIT A**

The following persons are heirs of the Decedent (see paragraphs 3 and 4 of the Petition):

<u>Name:</u>	<u>Relationship:</u>	<u>Minor/Disabled:</u>	<u>P/E:</u>
Jane Doe 123 Main Street Anywhere, IL 10001	Mother	No	
Jerry Doe 123 Main Street Anywhere, IL 10001	Father	No	E
Janet Doe 456 South Street Somewhere, IL 10002	Sister	No	
James Doe 789 West Street Somewhere, IL 10002	Brother	No	

[OR]

EXHIBIT A

The following persons are heirs/legatees of the Decedent (see paragraph 3 of the Petition):

<u>Name:</u>	<u>Relationship:</u>	<u>Minor/Disabled:</u>	<u>H/L:</u>
Jane Doe 123 Main Street Anywhere, IL 10001	Mother	No	H
Jerry Doe 123 Main Street Anywhere, IL 10001	Father	No	H
Janet Doe 456 South Street Somewhere, IL 10002	Sister	No	H/L
James Doe 789 West Street Somewhere, IL 10002	Brother	No	H/L
Jane Doe, Trustee 123 Main Street Anywhere, IL 10001	Trust created under Will of Decedent		L

D. [2.48] Designation of Resident Agent

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, PROBATE DIVISION**

Estate of)
)
 [name of deceased],) No. _____
)
 Deceased.)

DESIGNATION OF RESIDENT AGENT

I, [name of executor], of [city, state], hereby designate [name of attorney], of [attorney’s firm], [address of attorney’s firm], as my resident agent in Illinois to accept service of process, notice, or demand required or permitted by law to be served on me in my capacity as independent executor/administrator.

Dated: [date]

 [Name of Executor]

Name: [attorney’s name]
Firm Name: [attorney’s firm]
Attorney for: [name of Independent Representative]
Address: [Address]
Telephone: [telephone number]
Atty. No.: [attorney number]

E. [2.49] Petition for Probate with the Will Annexed

0009 Supervised 1009 Jury 0010 Independent 1010 Jury
Petition for Probate of Will and for Letters of Administration with Will Annexed

(Rev. 09/06/13) CCP 0316

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-PROBATE DIVISION

Estate of

Deceased No.

PETITION FOR PROBATE OF WILL AND FOR LETTERS
OF ADMINISTRATION WITH WILL ANNEXED

_____ states under penalties of perjury:

1. _____, whose place of residence at the time of death was
(Address) (City) (County) (State) (Zip)
died _____, at _____ leaving a will
(date) (City) (State)
dated _____
(and codicil dated _____)

2. The approximate value of the estate in this state is:
Personal \$ _____ Real \$ _____ Annual Income
From Real Estate \$ _____

3. The names and post office addresses of the testator's heirs and legatees are set forth on Exhibit A and made a part of this
petition. (List heirs first, indicate the relationship of each heir and legatee and, if an heir or legatee is a minor or
disabled person, so state.)

4. The testator nominated as executor _____ who
(reason for not acting)

5. The names and post office addresses of the persons who are entitled to nominate an administrator in preference to
(P) or equally with (E) petitioner are set forth on Exhibit A made a part of this petition. (If none, so state).

6. Petitioner is a _____ of testator, is legally qualified to act or to nominate
a resident of Illinois to act as administrator and nominates _____
whose address is _____

*7 The name and post office address of the personal fiduciary designated to act during independent administration
for each heir or legatee who is a minor or disabled person are shown on Exhibit A, made a part of this petition.

Petitioner asks that the will be admitted to probate and that letters of administration with will annexed issue.

Atty. No. _____
Name: _____ Petitioner
Firm Name: _____
Attorney for Petitioner: _____ Address
Address: _____
City/State/Zip: _____ City State Zip
Telephone: _____

If a consul or consular agent is to be notified, name country: _____
*If supervised administration is requested, so state and strike paragraph 7.

Attorney Certification

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

F. [2.50] Notice to Creditors**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, PROBATE DIVISION**

Estate of _____)
)
 [name of deceased],) No. _____
)
 Deceased.)

NOTICE TO CREDITORS

To: _____

Notice is hereby given to creditors of [name of deceased] of the death of the above-named Decedent on [date]. Letters of Office were issued to Sally Jones, c/o Attorney, Firm, Address, City, State, Zip.

Claims against the estate may be filed in the office of the clerk, Room 1202, Richard J. Daley Center, 50 W. Washington St., Chicago, IL, or with the Representative, or both, by [date], or within three months of the date of mailing of this notice, if later. Any claim not filed on or before that date is barred. Copies of a claim filed with the clerk must be mailed or delivered by the claimant to the Representative and to the Attorney within ten days after it has been filed.

Dated: [date]

 [name of executor]

Name: [attorney's name]
Firm Name: [firm name]
Attorney for: [name of independent executor]
Address: [address]
Telephone: [telephone number]
Atty. No.: [attorney number]

G. [2.51] Order Form for Claims Notice

**LAW BULLETIN PUBLISHING COMPANY
415 N. State St., Chicago, IL 60610
Phone: 312-644-7800 Fax: 312-416-0045**

**ORDER FORM FOR CLAIMS NOTICE
WITH OR WITHOUT NOTICE TO UNKNOWN HEIRS**

Estate of [name of deceased] deceased.

Case No. _____, Docket _____, Page _____

Date Letters Issued _____

Representative's Name _____

Representative's Address _____

Check the Appropriate Boxes: Testate _____ Intestate _____
Supervised _____ Independent _____

List Heirs Who Need Notice: _____

Amount of Personal Estate: \$ _____ Amount of Real Estate \$ _____

Attorney for Estate: _____
(name)

(address)

(telephone) (fax)

OPTIONAL:

Payment by: VISA _____ Master Card _____ American Express _____

Credit Card #: _____

Expiration Date: _____

Cardholder's Name (as it appears on card): _____

Cardholder's Daytime Phone: (____) _____

H. [2.52] Acceptance of Office

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, PROBATE DIVISION**

Estate of)	
)	
Jane A. Doe,)	No. _____
)	
Deceased.)	

ACCEPTANCE OF OFFICE

The undersigned, qualified to accept and administer trusts in this state, accepts the office of representative of this estate.

Date: _____, 20__

By _____

Title

Name: Kim Kamin
 Firm Name: Schiff Hardin LLP
 Attorney for: Independent Executor
 Address: 233 S. Wacker Dr., Suite 6600
 City & Zip: Chicago, IL 60606
 Telephone: 312-258-5500
 Atty. No.: XXXXX

I. [2.53] Waiver of Notice

2517 Waiver of Notice

(Rev. 09/06/13) CCP 0303 A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Estate of _____		No. _____
Deceased		

WAIVER OF NOTICE

The undersigned heirs of the decedent, *or legatees under decedent's will dated _____, _____,
 (and codicil dated _____, _____)
 having been advised that a petition has been filed by _____

* (a) for the admission to probate of that will, and
 (b) for the appointment of _____ as
 _____ of the estate,
 (representative) (independent representative)

consent to that appointment and waive:

- (a) notice of the hearing on the petition.
- * (b) notice of rights to require formal proof of the will and to contest the admission or denial of admission of the will to probate.
- ** (c) notice of rights in independent administration.

* Strike if no will.
 ** Strike if supervised administration.

SEE REVERSE SIDE

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

(Rev. 09/06/13) CCP 0303 B

RIGHT OF HEIRS OR LEGATEES (APPLICABLE WHERE DECEDENT LEFT A WILL)

Within 42 days after the effective date of the original order of admission, any heir or legatee may file a petition with the court to require proof of the will by testimony of the witnesses to the will in open court or other evidence, as provided in section 6-21 of the Probate Act of 1975. (755 ILCS 5/6-21)

Each heir or legatee also has the right under section 8-1 or 8-2 of the Illinois Probate Act of 1975 (755 ILCS 5/8-1, 8-2) to contest the validity of the will or the denial of admission by filing a petition with the court within six months after entry of the order admitting or denying the will.

**RIGHTS OF INTERESTED PERSONS DURING INDEPENDENT ADMINISTRATION
(APPLICABLE WHERE AN INDEPENDENT REPRESENTATIVE IS APPOINTED)**

Independent administration means that the executor or administrator will not have to obtain court orders or file estate papers in court during probate. The estate will be administered without court supervision unless an interested person asks the court to become involved.

Under section 28-4 of the Probate Act of 1975 (755 ILCS 5/28-4), any interested person may terminate independent administration at any time by mailing or delivering a petition to terminate to the clerk of the court. However, if there is a will which directs independent administration, independent administration will be terminated only if the court finds there is good cause to require supervised administration; and if the petitioner is a creditor or nonresiduary legatee, independent administration will be terminated only if the court finds that termination is necessary to protect the petitioner's interest.

In addition to the right to terminate independent administration, any interested person may petition the court to hold a hearing and resolve any particular question that may arise during independent administration, even though supervised administration has not been requested (755 ILCS 5/28-5). The independent representative must mail or deliver a copy of the estate inventory and accounting to each interested person, and must send notice to or obtain the approval of each interested person before the estate can be closed (755 ILCS 5/28-6, 28-11). Any interested person has the right to question or object to any item included in or omitted from any inventory or account or to insist on a full court accounting of all receipts and disbursements with prior notice, as required in supervised administration (755 ILCS 5/28-11).

Atty. No. _____
 Atty. Name: _____
 Firm Name: _____
 Atty. for: _____
 Address: _____
 City/State/Zip: _____
 Telephone: _____

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

J. [2.54] Surety Bond Application

United States Fire Insurance Company
FIDUCIARY BOND APPLICATION

Complete All Questions and Provide Required Documentation		
NAME:		SOCIAL SECURITY NUMBER OR FEIN
ADDRESS:	CITY:	STATE: ZIP:
OCCUPATION	DATE OF BIRTH	AGE
NAME OF DECEASED OR TITLE OF CASE		RELATIONSHIP OF DECEDENT OR WARD
TITLE AND LOCATION OF COURT		CASE NUMBER
NAME AND ADDRESS OF ATTORNEY		
TYPE OF BOND	AMOUNT OF BOND	DATE OF DECEDANT'S DEATH
IF YES IS CHECKED, PROVIDE WRITTEN EXPLANATION 1) Applicant has filed bankruptcy in prior 10 years <input type="checkbox"/> YES <input type="checkbox"/> NO 2) Applicant is indebted to the estate <input type="checkbox"/> YES <input type="checkbox"/> NO 3) Have you ever been sued or had a claim made against you for negligence, errors or omissions, or delinquency in the handling of any financial affairs <input type="checkbox"/> YES <input type="checkbox"/> NO 4) An ongoing business is part of the estate <input type="checkbox"/> YES <input type="checkbox"/> NO 5) Applicant has ever been convicted of a crime <input type="checkbox"/> YES <input type="checkbox"/> NO		IF YES IS CHECKED, PROVIDE DOCUMENT NOTED 1) Is there a Will? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 2) Is there a Trust? <input type="checkbox"/> YES <input type="checkbox"/> NO 3) Is there a Power of Attorney? <input type="checkbox"/> YES <input type="checkbox"/> NO AGENT NAME AND ADDRESS
LIST OF HEIRS AND THEIR SHARE OF THE ESTATE (INCLUDE APPLICANT IF APPLICABLE)		

Additional documents may be required, including but not limited to financial statements. **IMPORTANT:** This is an application for a bond. A bond is a credit relationship. A bond is not an insurance policy. The Applicant (Principal) and Indemnitors are jointly and severally responsible for the obligations covered by the bond and the conditions of the Indemnity Agreement contained in this application. USFIC will review your application, and in its sole discretion or through its authorized representative, determine whether to execute the bond requested. Any person who, with intent to defraud or knowing he is facilitating a fraud against an insurer, submits an application or files a claim containing false or deceptive statement is guilty of insurance fraud.

READ CAREFULLY. Your signature binds you to legal obligations should this bond be executed.

In consideration of United States Fire Insurance Company referred to hereafter as "Surety", issuing the bond applied for, the undersigned hereby agree for themselves, their heirs, successors and assigns, jointly and severally: To pay Surety an annual premium in advance each year during which liability under the bond shall continue in force until satisfactory evidence of termination of the Surety's liability is furnished to the Surety. First year's premium is fully earned upon issuance of the bond by Surety. To indemnify Surety against all losses, liabilities, costs, damages, attorney's fees, and expenses the Surety may incur or has incurred due to the execution or issuance of the bond on, before or after this date including any modifications, renewals or extensions of the bond or the enforcement of the terms of this indemnity agreement. The Surety or its representatives shall have the right to examine the credit history, department of motor vehicle records, employment history, books and records of the undersigned or the assets covered by the bond, or the assets pledged as collateral for the bond. **Privacy Notice:** All nonpublic personal information gathered pursuant to the application shall not be disclosed except as permitted by law. The undersigned agree to waive notice of the execution of the bond, notice of any fact, knowledge or information affecting the undersigned's rights or liabilities under the bond that Surety may have or discover prior to or after execution of the bond. The undersigned, upon written demand, shall deposit with Surety a sum of money or other security requested by Surety to cover any claim, suit, expense, or judgment that Surety may in its absolute discretion determine is necessary and the deposit shall be pledged as collateral security on any such bond or other bonds the Surety may have issued for the undersigned. The undersigned agrees that such collateral security may be used, without limitation to the above or otherwise, to pay for any fees or costs incurred by Surety in the defense or prosecution of any claim between Surety and undersigned regarding this agreement, including any claims for a return or reduction of the collateral security, or any bond or bonds issued by Surety. The undersigned expressly grants Surety the authority to retain the collateral security until Surety determines in its sole discretion that retention of such collateral security is no longer required. The undersigned hereby irrevocably appoints Surety as their attorney in fact to execute any documents necessary to perfect Surety's security interests in any collateral submitted to Surety. Surety shall have the exclusive right to determine if any claim or suit shall be denied, paid, compromised, defended or appealed. An itemized statement of payments made by Surety shall be prima facie evidence of the obligation of undersigned due to Surety. The undersigned agree that it is their responsibility to defend their own interests. Surety and undersigned agree that the place of performance of this agreement, including the promise to pay Surety, and venue for any suit, arbitration, mediation or any other form of dispute resolution shall be at the sole discretion of Surety. The undersigned confirms that Surety shall have every right, defense or remedy including the rights of exoneration and subrogation. Unless specified by law or stated in the bond that the bond cannot be cancelled, Surety may cancel bond by mailing a notice of cancellation in the U.S. mail or other form of suitable mailing to the Oblige and Principal at the last address provided to Surety and cancellation shall become effective thirty (30) days after the date of deposit with the postal service. If any of the provisions of this agreement are determined to be void or unenforceable under the laws of any place governing its construction or enforcement, this instrument shall not be void or vitiated thereby but shall be construed and enforced with the same effect as though such provision(s) omitted. In making this application for the hereinabove described bond the undersigned warrants all statements provided are true and hereby agrees to notify Surety or its agent, of any change within 48 hours after such change has occurred. Regardless of the date of signature, this indemnity is effective as of the date of execution and renewal of the aforementioned bond(s) and is continuous until Surety is satisfactorily discharged from liability pursuant to the terms and conditions contained herein and in the bond(s).

Signed, sworn and dated this _____ day of _____, 20____.

Applicant's Name (Printed or Typed)

X

Applicant's Signature

Witness Name (Printed or Typed)

X

Witness Signature



Probate and Fiduciary Surety Application and Indemnity Agreement

- Liberty Mutual Insurance Company
- The Ohio Casualty Insurance Company

Applicant's Full Name: _____ Individual Corporation LLC
 SSN or TIN: _____

Business Address: _____
 Residence Address: _____
 Occupation: _____ Years in business: _____
 Are you a U. S. Citizen? Yes No: What is your residency status? _____
 Email Address: _____
 Drivers License Number: _____
 Home Phone: _____ Cell Phone: _____
 Have you or any partners been bankrupt or insolvent? Yes: Provide explanation on Application Supplement No
 Are there any lawsuits, judgments, or liens outstanding against applicant? Yes: Explain using Application Supplement No
 Name and Address of Attorney: _____
 Will the attorney remain involved throughout the duration of the case? Yes No
 Has any Surety denied application for the bonds listed? Yes: Provide explanation on Application Supplement No
 Prior Surety Yes: give name and reason for change: _____ No

Administrator or Executor Bond

Type of Bond Required: _____ Bond Amount: _____
 Legal Name of Deceased: _____ Date of Death: _____
 Date of appointment: _____ Court and Docket No.: _____
 Applicant's relationship to Deceased: _____
 Estimated Estate Assets: _____ Personalty \$ _____ Realty \$ _____ Estimated Estate Debts: _____
 List each heir of the estate with its relationship and percentage (%) share: _____

Will any business of the estate be continued by fiduciary?	<input type="checkbox"/> Yes: Attach copy of Court Order	<input type="checkbox"/> No
Is applicant indebted to the estate?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Did Decedent execute a Last Will and Testament?	<input type="checkbox"/> Yes: Attach copy if bond exceeds \$1Million	<input type="checkbox"/> No
Does applicant replace a prior Fiduciary?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is this an additional bond?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does this bond replace a prior bond?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is this bond required on the demand of an interested person?	<input type="checkbox"/> Yes: Whom? _____	<input type="checkbox"/> No

Guardian, Conservator or Trustee Bond

Type of Bond Required: _____ Bond Amount: _____
 Legal Name of Minor Incapacitated: _____ Date of Birth: _____
 Estimated Estate Assets: _____ Personalty \$ _____ Realty \$ _____ Estimated Estate Debts: _____
 Date of appointment: _____ Court and Docket No.: _____
 Applicant's relationship to the wards or minors: _____

Will Guardianship funds be used for the support of minors?	<input type="checkbox"/> Yes: Attach copy of Court Order authorizing monthly expenditures	<input type="checkbox"/> No
Will any business of the wards be continued by Fiduciary?	<input type="checkbox"/> Yes: Attach copy of Court Order	<input type="checkbox"/> No
Is the bond required on the demand of an interested person?	<input type="checkbox"/> Yes: Whom? _____	<input type="checkbox"/> No
Is applicant indebted to the wards?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Will joint control be exercised?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is this an additional bond?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does applicant replace a prior Fiduciary?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does this bond replace a prior bond?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Will a Supplemental Needs Trust be created?	<input type="checkbox"/> Yes: Attach copy of the Trust, if executed	<input type="checkbox"/> No
Has the ward(s) executed a Last Will and Testament?	<input type="checkbox"/> Yes: Attach copy if bond exceeds \$1 Million	<input type="checkbox"/> No

Agency Name _____ Code: _____
 Agency Address _____
 Agent's Recommendation _____

Indemnity Agreement

The undersigned (collectively "Indemnitor") represents that all statements made in this Application and in any Application Supplement are true and made without reservation to induce Liberty Mutual Insurance Company and any other company that is part of or added to the Liberty Mutual Group, severally not jointly, and/or for which surety business is underwritten by Liberty Mutual Surety ("Surety") to extend surety credit in any manner or amount, including but not limited to providing or having provided requested Bond(s) including any modifications thereto in reliance upon the provision of its indemnity, and

with regard to such surety credit hereby agrees with Surety, its successors and assigns, as follows: (1) to pay premiums when due; (2) to deliver evidence satisfactory to Surety, of the release of all liability; (3) to exonerate and indemnify Surety from and against all claims, losses, liability, damages of any type (including punitive), costs, fees, expenses, suits, orders, judgments, or adjudications whatsoever which Surety may incur in any manner related to the extension of surety credit, including the enforcement of the agreements contained herein and any matter subject to any bankruptcy court (collectively "LOSS"); (4) That Surety shall have the right, at its sole discretion, to pay, adjust, settle or compromise any LOSS and the voucher or other evidence of such payment, settlement or compromise, whether Surety was liable therefore or not, shall be prima facie evidence of the fact and extent of Indemnitor's liability; (5) to place Surety in funds immediately upon demand, the amount Surety deems necessary to protect itself from any LOSS or potential LOSS, whether or not Surety has made payment or posted a reserve, Surety having the right to use all or part of these funds in payment or settlement of any LOSS or in reimbursement to Surety for payment of same; (6) that Indemnitor hereby authorizes Surety to investigate statements made herein and to check credit with creditors and/or lending institutions, and further authorizes any present or former employer or any other person, firm or corporation, to furnish information concerning Indemnitor in connection with the Surety's extension of surety credit and with Indemnitor's compliance with obligations hereunder and under any Bond or underlying obligation, and Indemnitor hereby releases any of the aforementioned from liability in consequence of furnishing or disclosing such information; (7) that Surety may bring separate suits to recover hereunder as causes of action shall accrue and that the bringing of suit or recovery of judgment upon any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether heretofore or thereafter arising; (8) that and all other rights which Surety may have or acquire against Indemnitor under other or additional agreements of indemnity or any other written agreement (with this Agreement collectively "INDEMNITY") related to the extension of surety credit, shall be in addition to and not in lieu of the rights afforded Surety under this Agreement; (9) that if Surety executes any Bond(s) with any cosurety or reinsurers all or any part of any Bond(s), that all the terms of this Agreement shall apply and operate for the benefit of such cosurety and reinsurer, as their interests may appear; (10) that these covenants shall be jointly and severally binding upon Indemnitor, its respective heirs, executors, administrators, successors and assigns; (11) that Surety shall have the right to decline to issue or to cancel Bond(s) at any time, free of claim for loss or damage by Indemnitor, and Surety shall be under no obligation to disclose its reasons therefore, the provisions of any law to the contrary being hereby waived; (12) that the exercise, delay of or failure by Surety to exercise of any right, remedy or power whatsoever shall not preclude Surety's simultaneous or subsequent exercise or constitute any waiver of such or other rights, remedies or powers; (13) that if any Bond(s) relate to the assets of an estate, Indemnitor will provide reasonable access to all records concerning the estate and upon request shall provide a written report of the condition of the estate. Furthermore, Indemnitor grants, assigns, pledges and conveys to Surety as security, a lien on and security interest in and to Indemnitor's interest, title and rights in the proceeds of any insurance policy affording coverage for all or part of any bonded obligation, and in the contracts or obligations (and all proceeds thereof without limitation) that grow in any manner whatsoever as a result of the extension of surety credit. While the lien and security interests are effective immediately, Surety may exercise its remedies with respect to such only in the event of: a) Indemnitor's failure to fulfill any obligation whatsoever for which i) Bond(s) are provided, ii) contained in any Bond(s), or iii) contained within any INDEMNITY agreement with the Surety; and b) any assignment by Indemnitor for the benefit of creditors or any agreement or proceeding of liquidation, receivership or bankruptcy whatsoever. Indemnitor hereby authorizes Surety to file any such financing statement as Surety deems necessary or appropriate to perfect the liens and security interest granted herein.

INDEMNITORS ACKNOWLEDGE AND AGREE THAT: THE FIRST YEAR PREMIUM IS FULLY-EARNED WHEN THE BOND IS ISSUED EVEN IF THE BOND IS SUBSEQUENTLY REDUCED OR TERMINATED DURING THE FIRST YEAR. IF A BOND IS REDUCED OR TERMINATED DURING THE SECOND OR SUBSEQUENT YEAR AFTER A RENEWAL PREMIUM IS PAID, THE RENEWAL PREMIUM SHALL BE ADJUSTED PRO RATA UPON REDUCTION OR TERMINATION.

Signed and dated this _____ day of _____, 20_____

Individual/Sole Proprietorship Name: _____ SSN: _____

 Witness By: _____, Individual and Proprietor (Seal)

Corporation/LLC Name: _____ FEIN: _____

 Attest: _____, Secretary By: _____, President/Managing Partner (Seal)

K. [2.55] Proof of Mailing and Publication

2616 Proof Of Mailing And Publication

(Rev. 09/06/13) CCP N1000 A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - PROBATE DIVISION

Estate of _____

No. _____

Deceased

PROOF OF MAILING AND PUBLICATION

The undersigned states under the penalties of perjury:

1. On _____, _____, the following required notices* were mailed to each person whose name and address are stated on the reverse side: (Please list notices mailed.)

Copies of each notice and the required documents, as mailed, are in the possession of the attorney.

2. The following notices * have been published:

The publisher's certificate for each notice is attached hereto or is on file with the clerk of the court.

Atty. No.: _____	_____
Name: _____	Petitioner/Representative/Attorney
Firm Name: _____	_____
Atty. for Representative: _____	Date
Address: _____	_____
City/State/Zip: _____	Attorney Certification if signed by Petitioner or Representative (Sup. Ct. Rule 137)
Telephone: _____	_____

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

(Rev. 09/06/13) CCP N1000 B

*Fill in the blanks in 1 and 2 with the appropriate notices under the Probate Act. The more frequently used forms are listed below:

<u>PROBATE ACT §</u>		<u>DESCRIPTION OF NOTICE</u>
<u>Mailed Notices</u>		
Form # 1020	6-10	Notice to heirs and legatees -- will admitted
Form # 1003 A-B	28-2	Notice to heirs and legatees of rights in independent administration
Form # 1004	9-5 and 6-2	Notice to heirs of hearing on petition for letter of administration (or L/A with will annexed)
Form # 1007	28-4(a)	Notice of termination of independent administration
Form # 1008	28-11(e)	Notice of final report-- independent administration
<u>Published Notices</u>		
(A)	18-3	Claims notice
(B)	6-10 and 18-3	Notice to unknown heirs and legatees of admission of will, and claims notice
(C)	9-5 and 18-3	Grant of independent administration in intestacy and claims notice
(D)	28-11 (e)	Final report filed -- independent administration
(E)	9-8(g)	Summary administration notice

Name	Address	City/Zip
------	---------	----------

L. [2.56] Claims Notice

LAW BULLETIN PUBLISHING COMPANY
 415 N. State St., Chicago, IL 60610
 Phone: 312-644-7800 FAX: 312-416-0045

**ORDER FORM FOR CLAIMS NOTICE
 WITH OR WITHOUT NOTICE TO UNKNOWN HEIRS**

Estate of _____
 deceased.

Case No. _____, Docket _____, Page _____

Date Letters Issued _____

Representative's Name _____

Representative's Address _____

_____ (city) (state) (zip code)

Check the Appropriate Boxes: Testate _____ Intestate _____

Supervised _____ Independent _____

List Heirs Who Need Notice: _____

Amount of Personal Estate: \$ _____ Amount of Real Estate \$ _____

Attorney for Estate: _____
 (name)

_____ (address) (city) (state) (zip code)

_____ (telephone) (fax)

OPTIONAL:

Payment by: VISA _____ Master Card _____ American Express _____

Credit Card #: _____

Expiration Date: _____

Cardholder's Name (as it appears on card): _____

Cardholder's Daytime Phone: (_____) _____