

WISCONSIN'S PROBATE ADMINISTRATION GUIDELINES FOR BENEFICIARIES AND PERSONAL REPRESENTATIVES

Wisconsin law provides that a formal (required court hearing(s)) or informal (no required court appearances or hearings) post death administration process called probate be used in order to transfer titled and untitled assets into the names of a decedent's beneficiaries either named in a Will (testate) or determined to be heirs-at-law (intestate, without a Will). The Statutes determine who are heirs-at-law, according to ancestry charts.

The probate process itself can take 12 months or more, depending upon the complexity of the assets, sale-ability of real or personal property, cooperation of heirs, tax issues, and so forth. While I make every effort to close a file with as short a timetable as possible from the date of appointment of the Personal Representative (PR) this is not always possible. The law requires that a probate file be closed within 18 months from the date of the initial appointment of the Personal Representative, but this time can be extended for necessary reasons. No file may be closed with a Court until a tax clearance certificate is received from the Wisconsin Department of Revenue, even though there is no inheritance tax. A file cannot be closed until the satisfaction of all debts and receipts from creditors which file a claim. The County's expectation is that the file will be closed within one year, unless there is cause to extend the time to close.

The process starts with either a petition to the Court (formal) or an application for administration (informal). If the interested persons (heirs at law or beneficiaries under a Will) sign a Waiver and Consent form, then the Personal Representative (PR), the person designated in a Will or chosen by the Court may be appointed as soon as all Waivers and initial papers are provided to the Court. If the process is initiated under the notice provisions of the Wisconsin Statutes, the Personal Representative will be appointed approximately 30-45 days from the filing of the initial papers with the Court. Probate proceedings are initiated in the County where the decedent was domiciled as of the date of death. If the decedent owned any real property outside the State of Wisconsin, then an ancillary probate administration may be required in the other state where the property is located. Milwaukee County requires an initial first appearance, unlike other counties in Wisconsin.

After the PR is appointed, it is his or her job to collect and inventory the assets of the estate. Typical estate assets requiring probate administration include automobiles, titled motor vehicles, real estate, cash or investment or stock accounts, mutual funds, checking accounts and personal property. Typical assets not subject to a probate administration include IRA and life insurance accounts or other assets containing a beneficiary or "payable on death" designation, unless payable to the deceased person's estate. The inventory must be exhibited with (informal) or filed (formal) with the Court on or before its due date, which is 6 months from the date of the appointment of the PR. All interested persons are entitled to receive a copy of the Inventory, which lists date of death values. A filing fee is payable to the Court which equals the value of the inventoried assets (date of death values) multiplied by .002.

The Court designates a date three months from the date of the PR appointment by which creditors of the decedent must file claims against the estate, or be barred from making such claims. Claimants usually are creditors of the estate, such as medical services providers, credit card companies if the decedent had outstanding debts at the time of death, and so forth.

Publication notice is made in the newspaper designated by the County for three consecutive weeks so that creditors are made aware of the probate administration and the date by which claims must be made. The PR is responsible for paying or contesting claims made against the estate. Legal advice should be sought, especially if the assets in the estate are insolvent (insufficient funds to pay the expenses, beneficiaries, taxes, etc.).

After the Inventory, the PR, with my assistance, prepares a Final Account which lists all items received by the estate since date of death, and all items disbursed or paid out since date of death. A final "cut off" date is used, after which the assets remaining on hand for distribution are divided among the beneficiaries. The Final Account must be filed with the Court, and all interested persons receive a copy. The accounting is similar to an accountant's ledger/balance sheet, which must balance to zero at the end of the proceedings. The accounting will list other disbursements, such as claims paid, beneficiaries' payments, attorneys and personal representative fees.

Distributions from the estate should not be made without first consulting legal counsel and/or an accountant who is familiar with the preparation of estate income tax returns. Distributions from the estate may have undesirable income tax consequences, depending upon each individual situation.

Under Wisconsin law, Personal Representatives are entitled to take a fee, considered taxable income, of not more than 2% of the gross estate (inventory) assets, and which is considered taxable income in the year taken. PR's may choose to waive this fee, especially if the PR is the sole beneficiary or child of the decedent, but the fee is designed to reimburse the PR for the multitude of jobs required in order to settle the estate. Besides collecting information on all the beneficiaries or heirs-at-law, the PR will attend any court-required hearings, if any, will sign all documents on behalf of the estate, prepare the Inventory and Final Accounting, and prepare (or with the attorneys or accountant's assistance prepares) all necessary tax returns, both State and Federal. A Federal Estate Tax Return is required only if the assets exceed a certain amount. The decedent must file a final 1040 income tax return and the estate is required to file an estate income tax return (1041). Again, income tax clearance is required and must be filed with the Court before the file can be officially closed.

The Personal Representative has a fiduciary duty to each beneficiary of the Estate and promises the Court that he or she will inventory the assets, account for the income and disbursements in the Estate, and complete all documents necessary in the administration. The Personal Representative also has a duty to prudently manage the assets within the Estate during its administration.

The probate administration process typically progresses smoothly, but it can be interrupted by the following: difficulty selling real estate, tax issues, unresolved creditor problems, or family discord.

While I attempt to keep family members current about the estate administration process, my policy is not to generate unnecessary correspondence. I invite family members to contact me at any time with questions about the process or status of the file, but I also need to make clear that I represent the Personal Representative of the Estate with the probate administration process, and not individual family members.

I look forward to working with your family and appreciate the trust and confidence you place with me.

Prepared Courtesy of:
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