

### **WHEN YOU OPEN AN ESTATE:**

Due to both COVID restrictions and the high volume of estates administered in the York County Probate Court, you must call for an appointment (803-684-8513). The Court will send you a **Court Information Sheet** (CIS) via mail or email which is to be **completed** and **brought to the appointment**. If you have questions about the CIS, leave your name and number with the receptionist. All calls or emails will be returned within 24 hours.

**AT THE INITIAL APPOINTMENT:** The staff may not give legal advice, but will explain the administrative process and help you with the forms. **NOTE: the forms may be downloaded from <http://www.sccourts.org/forms>.**

### **IF THE DECEDENT HAD A WILL (TESTACY):**

Persons entitled to the Decedent's assets are **devisees**, and the Decedent will have nominated a Personal Representative (PR) who must provide:

- ~ The **original** Will.
- ~ The death certificate.
- ~ Names and addresses of the devisees **and** of the Decedent's **intestate** heirs (see below).
- ~ \$67.00 cash, check or money order payable to the York County Probate Court for publication of the notice to creditors. **NOTE: this is handled by the Court – the PR does not contact the newspaper.**

### **IF THE DECEDENT DID NOT HAVE WILL (INTESTACY):**

Persons entitled to the Decedent's assets are **heirs-at-law**. The person who has priority to serve as PR (see S.C. Code §62-3-203), or who has obtained renunciations from those with equal priority, must provide:

- ~ The death certificate.
- ~ **Signed** renunciations (Form 302ES) from heirs at law who have same priority to serve as the person applying.
- ~ Names and addresses of Decedent's **intestate** heirs. **NOTE: if a child of the Decedent died before the Decedent, the deceased child's children must be listed.**
- ~ \$67.00 (see above).

### **IF IT'S A "SMALL" ESTATE (LESS THAN \$25,000 IN ASSETS AND NO REAL ESTATE):**

A PR may not be needed. A successor to the estate (heir, devisee or any person who has paid the funeral bill) may sign an Affidavit for Collection of Personal Property. The property valuation fee is \$25 (-0- to \$5,000), \$45 (\$5,001 to \$20,000), or \$67.50 if between \$20,001 and \$25,000).

The successor must provide:

- ~The death certificate showing death occurred more than 30 days before the appointment.
- ~ The **original** Will, if any.
- ~Names and addresses of devisees and heirs.
- ~A paid funeral bill (or invoice if the funeral home is the successor).
- ~Information as to assets which are to be transferred:
  - ~For titled vehicles – the make, VIN and approximate value
  - ~For bank accounts – name of bank and amount

- For insurance policies – name of company and amount (only if either no beneficiary named or the estate is named as beneficiary)
- Checks payable to the Decedent or the estate

***NOTE: if the successor doesn't have this information, the Court will provide the forms needed to obtain it.***

### **IF THE DECEDENT HAD A WILL BUT OWNED NO ASSETS- WILL PROBATED ONLY:**

No PR is appointed but the Will is “proved” by the filing of:

- ~ The **original** Will.
- ~ The death certificate.
- ~ The **Application for Probate (Form 300ES)** – see below.
- ~ The **Information to Heirs and Devisees (Form 305ES)** and **Proof of Delivery (Form 120ES)** – see below.
- ~ \$25 filing fee.

It is advisable to probate the Will to avoid the Probate Code’s ten (10) year statute of limitations; if more than ten years since a person died, no estate may be opened nor PR appointed.

### **FORMS TO BE COMPLETED BEFORE OR AT THE APPOINTMENT:**

**FORM 300ES: the Application for Informal Probate** (if there is a Will) and/or **Informal Appointment** (whether or not there is a Will and if a PR is needed): collects legally required information about the Decedent, the heirs and devisees, and the PR.

**FORM 420ES (Affidavit for Collection of Personal Property):** for small estates only.

**FORM 121ES: (Appointment of Agent for Service of Process):** required only if PR is not a SC resident.

**FORM 305ES (Information to Heirs and Devisees)** and **FORM 120ES (Proof of Delivery):** notifies the heirs and devisees that the Will, if any, has been probated and a PR appointed if necessary. Must be filed and delivered/mailed to heirs and devisees within **THIRTY DAYS** of PR’s appointment.

**NOTICE TO CREDITORS:** published in a local newspaper once a week for three weeks. Creditors have eight (8) months from the first date of publication to file claims. The PR **must** take action to address the claims before the estate may be closed.

***NOTE: If the estate is opened more than 365 days after the Decedent died, creditors are barred and no Notice is required.***

### **WHAT HAPPENS NEXT:**

**FORM 350ES (INVENTORY & APPRAISEMENT):** Within **NINETY DAYS** of the PR’s appointment, the PR files an inventory of the Decedent’s assets. Most PRs file a short form listing only

probate assets. ***Not all assets are probate assets. For example, life insurance policies, annuities, and retirement and pension plans with beneficiary designations are non-probate and are not listed.*** Appraisals are not required but the PR must assign a fair market value to all assets. ***NOTE: beginning January 19, 2022, there will be monthly information sessions -- usually on the third Wednesday -- to answer questions about preparation of the inventory.***

**PROPERTY VALUATION FEES:** A fee statement is generated when the Inventory is filed. The fees are set by the state legislature and are listed in S. C. Code §8-21-770. Assets that are jointly owned with right of survivorship are not included in the calculation. ***NOTE: property located in other counties or states must be listed on the Inventory and included in the fee calculation.***

**AFTER THE CLAIMS PERIOD EXPIRES:**

**PR'S RESPONSIBILITIES FOR CLAIMS:** At the end of the claims period (see above), the PR must determine the validity of any claims filed. If estate assets are insufficient to fully pay valid claims, the PR must prioritize payments. ***NOTE: when a claim is paid, the PR must obtain and file a release from the creditor and file it with the Court before the estate may be closed.***

**DEED OF DISTRIBUTION (FORM 400ES):** if the Decedent owned real estate, a "deed" of distribution must be recorded with the York County Register of Deeds (\$15.00 recording fee) and ***a copy of the recorded document*** sent to the Probate Court. It is recommended that an attorney prepare the document because it requires a legal description. The deed of distribution should be filed only after the PR has determined the real estate is not needed to pay valid debts, expenses and claims.

**TO CLOSE THE ESTATE:**

The Court notifies the PR when it's time to close the estate. Closing should occur about a year after the Decedent's death. In a typical case (more than one heir or devisee), the PR files an **Application for Settlement (Form 412ES)**, **Proposal for Distribution (Form 410ES)**, **Accounting (Form 361ES)** showing all receipts and disbursements of the Decedent's assets, and a **Notice of Right to Demand a Hearing (Form 416ES)**, and sends copies to all heirs or devisees. A **Proof of Delivery (Form 120ES)** showing the date and method of delivery is required. If an heir or devisee files a Demand for Hearing within thirty (30) days of the date the Proof of Delivery is filed, the Court will notice a hearing. If the PR obtains a **Statutory Waiver of Filing Requirement and Beneficiary Receipt/Release (Form 365ES)** from each heir or devisee, only the **Application for Settlement** is required. ***NOTE: if the PR does not close the estate in a timely manner, a hearing is scheduled.***