

1B-302. General instructions for probate forms.

A. The different types of probate cases.

(1) ***Routine simple cases.*** The forms are intended for routine probates. If you run into a problem or the estate you are probating is not routine, it is best to seek the advice of a lawyer.

(2) ***Cases that do not need to be probated.*** Certain estates that are worth less than fifty thousand dollars (\$50,000) and that have no real property (usually land) may not need to be probated at all and can be handled in a less formal way. Also, certain estates with a house worth under five hundred thousand dollars (\$500,000) that will pass to a surviving spouse also may not require a probate. See Sections 45-3-1201 to 45-3-1206 NMSA 1978. If you believe that the estate you are working on might not need to be probated, you should consult with a lawyer. If the estate does not need to be probated, you may still need a lawyer's help but may not need the forms.

(3) ***Difficult or complex cases.*** Certain estates contain difficult or complex issues that should be reviewed by a lawyer with probate experience. Examples of difficult or complex cases may include one in which there is real property (land) involved and deeds need to be drafted, or one in which there is a large estate and an estate tax return needs to be filed. It may not be appropriate to file such an action in probate court, or the action may require more forms than are provided in the probate forms.

B. Use of forms. The Supreme Court has approved forms for use in probate court by people who are representing themselves in the process. The forms are available at your county probate court and on the New Mexico Supreme Court website. The forms serve a useful, but limited, purpose. They will assist you in completing the necessary paperwork for most routine, simple probate cases.

The forms are for use by people who are willing and qualified to act as a personal representative. This is the person who will collect and value the assets of the estate, pay the debts of the estate, and distribute the remaining assets. A personal representative is a fiduciary who has special obligations to the estate, creditors, heirs, and devisees. The court holds a personal representative to a high legal standard. If you are willing to undertake this position, you should do it with extreme care and caution and pay very careful attention to the necessary details. Because of the fiduciary role that you will be undertaking, it is a good idea to seek help from a lawyer experienced in probate.

You should fill out the forms carefully. Several of the forms have statements in them that do not require you to fill in a blank. However, before you sign the form or submit it to the judge, you must be sure that the statements are true in your case. If not, change the form as needed. When you sign the forms, you are telling the judge under penalty of perjury under the laws of the State of New Mexico, that the information is true and correct. **Please check each form you sign to make sure that it is true and correct.**

If you have questions about issues that the forms do not address, you should consult with a lawyer. Alternatively, the public libraries often have resource materials that may help you answer your questions.

C. Demand for notice. Occasionally someone may file a demand for notice. If you know of a demand for notice, you must send a copy of everything you file and every order the judge signs to the person who has demanded notice.

D. How to get help. The probate court clerks are not lawyers and cannot give you advice on how to fill out the forms or give you advice on the issues that the forms do not address. The court clerks can give you information regarding the process of filing the paperwork. You should contact court staff for filing procedures.

The probate court judge is not an advocate representing you. The judge cannot and will not give you advice about how to complete the probate. When you act as a self-represented person, you are your own lawyer.

The Supreme Court has approved a list of simplified definitions of certain legal terms, contained in Rule 1B-102 NMRA. The list may be helpful to you. You may get a copy of the rule and approved forms from the probate court or obtain them electronically through the New Mexico Supreme Court website.

Finally, it may be necessary to consult with a lawyer during the process. **SEEK THE HELP YOU NEED BEFORE YOU SUBMIT THESE FORMS.**

[Approved, effective September 15, 2000; 4B-003 recompiled and amended as 1B-302 by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-014, effective December 31, 2018, changed the value of estates that do not need to be probated, made certain technical changes, and made certain non-substantive language changes; in Subparagraph A(2), after “worth less than”, changed “thirty” to “fifty”, after “thousand dollars” deleted “(\$30,000) (forty-five thousand dollars (\$45,000) in some cases” and added “(\$50,000)”, after “house worth under”, changed “one” to “five”, changed “(\$100,000)” to “(\$500,000)”, and after “Sections 45-3-1201”, added “to 45-3-1206”; and in Paragraph D, after “definitions of certain legal terms”, added “contained in Rule 1B- 102 NMRA”.

Recompilations. — Former Form 4B-003 NMRA, relating to general instructions for probate forms, was recompiled and amended as 1B-302 NMRA, effective for all cases pending or filed on or after December 31, 2018.