

1B-303. General instructions for probates (*no will*).

A. **Determine if there is a will.** First, determine whether the decedent had a will. Different forms are used if there is a will (meaning the person died "testate") and if there is not a will (meaning the person died "intestate"). This set of instructions should be used if you have not been able to find a will signed by the decedent.

B. **Overview of steps.** There are essentially the following eight steps to an informal probate:

(1) file an application to start the process and have the court appoint you as personal representative;

(2) within thirty days of your appointment send out notice to the decedent's heirs that you have been appointed as personal representative and that a probate action is in process;

(3) during the first year following the decedent's death, if you want to shorten the time period that creditors have to make claims, you may notify creditors that you are in the process of probating the estate by publishing a notice in the newspaper or mailing or delivering written notice to creditors. You may also choose to notify creditors by both means, publishing and providing written notice;

(4) gather, value, and list the assets of the estate and determine the debts of the estate;

(5) distribute the family and personal property allowances;

(6) pay the costs and expenses of administration and the valid debts of the estate, including all taxes;

(7) distribute the remaining assets of the estate to the decedent's heirs; and

(8) close the estate and probate action.

C. Completion and filing of forms.

(1) ***Print or type information.*** Please print or type the information on all forms. You will want to keep copies of all documents that you file in the court file and orders that the judge signs in the case. All forms and other papers filed with the court shall be clearly legible and printed on one side of the page on good quality white paper eight and one-half by eleven (8 1/2 x 11) inches in size.

(2) **Copies you will need.** Remember to take with you an original and as many copies as you want to have when you file papers or take an order to the judge for the judge's signature. The court clerk will stamp each copy as "Endorsed" (which shows it is a copy of the original filed document), but only at the time of filing. If you do not get an endorsed copy at the time of filing, you will likely have to pay a fee for a copy later.

(3) **Required filing fee.** There is a filing fee that you must pay to open the case. In very limited situations, you may apply to the judge for a waiver of the filing fee. See Forms 4B-201 and 4B-202 NMRA, Affidavit of poverty and indigency and Order allowing free process.

[Approved, effective September 15, 2000; as amended by Supreme Court Order No. 07-8300-005, effective March 1, 2007; 4B-011 recompiled and amended as 1B-303 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, revised the instructions for probating cases when there is no will, made certain technical changes, and made certain non-substantive language changes; after "probates", deleted "when there is no will" and added "*(no will)*"; in Paragraph A, replaced "deceased person" with "decedent" throughout the paragraph; in Paragraph B, after "essentially", deleted "six" and added "the following eight", in Subparagraph B(1), added "file an application to", in Subparagraph B(2), added "within thirty days of your appointment", and after "notice", added "to the decedent's heirs", in Subparagraph B(3), added "during the first year following the decedent's death, if you want to shorten the time period that creditors have to make claims, you may", and after "probating the estate", deleted "To do this you must send a notice to creditors of whom you are aware. In addition, if you want to shorten the time period that unknown creditors have to make claims, you may publish a notice in the newspaper. You *must* notify the creditors that you know of and *may* publish a notice in the newspaper", added "by publishing a notice in the newspaper or mailing or delivering written notice to creditors. You may also choose to notify creditors by both means, publishing and providing written notice", in Subparagraph B(4), after "gather", added "value", and after "estate", added "and determine the debts of the estate", in Subparagraph B(5), deleted "determine the debts of the estate and pay the valid ones. Distribute the remaining assets of the estate to the decedent's heirs; and", and added "distribute the family and personal property allowances", added Subparagraphs B(6) and B(7) and redesignated former Subparagraph B(6) as Subparagraph B(8); and in Subparagraph C(3), after "filing fee", added "See Forms 4B-201 and 4B-202 NMRA, Affidavit of poverty and indigency and Order allowing free process."

The 2007 amendment, effective March 1, 2007, amended Subparagraph (1) of Paragraph C to add the second sentence relating to the format of typewritten forms.

Recompilations. — Former Form 4B-011 NMRA, relating to general instructions for probates when there is no will, was recompiled and amended as 1B-303 NMRA, effective for all cases pending or filed on or after December 31, 2018.