

1B-305. General instructions for probates (*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 found 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 will probated and the court appoint you as personal representative;

(2) within thirty days of your appointment send out notice to the decedent's devisees and heirs that the will has been probated, 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 devisees of the estate listed in the decedent's will; 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).

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