

1B-306. Explanation of forms and how to complete; specific steps (*will*).

A. Step 1. Start the process and have the court appoint you as personal representative. In order to begin the probate process, you must file the following forms in the probate court in the county where the decedent was domiciled, or where that person owned real property. For Step 1 use Forms 4B-302 and 4B-304 NMRA.

(1) ***Form 4B-302 NMRA, Application for informal probate of a will and for informal appointment of personal representative (will) ("Application").*** See Sections 45-3-203 and 45-3-301 NMSA 1978. This form generally shows the judge the following:

- (a) the case is ready to be probated;
- (b) the case is appropriate for probate court; and
- (c) you are the appropriate person to act as personal representative.

You must sign and date this form and affirm in writing under penalty of perjury under the laws of the State of New Mexico that the statements are true and correct. Before you file the form, you must contact the district court clerk in the district where the decedent was domiciled or owned real property and ask if anyone has filed a demand for notice. If someone has filed a demand for notice, that person is entitled to get a copy of all documents you file in the case, including the application and all orders signed by the judge.

If you are designated in the will to act as personal representative, you have the first priority to act as personal representative. If you are not the first person designated in the will or are not listed in the will to act as personal representative, the person nominated in the will to be personal representative and each of the devisees must consent to your appointment as personal representative. For example, if you are the second person listed to act as personal representative but every person listed in the will wants you to act as personal representative, each person with a higher priority to serve as personal representative must sign the consent section of Form 4B-302 NMRA, Application. If any person with an equal or higher priority to serve as personal representative does not consent to your appointment as personal representative, a formal proceeding in district court is required. See Section 45-3-203 NMRA 1978. If a formal proceeding is required you may not use the forms and you should seek the advice of a lawyer.

(2) ***Form 4B-304 NMRA, Order of informal probate of will and appointment of personal representative (will).*** You must submit Form 4B-304 NMRA, Order of informal probate of will and appointment of personal representative (*will*), for the judge's consideration. If the judge approves the application, the judge will sign this order. See Section 45-3-308 NMSA 1978. The Order of informal probate of will and appointment of personal representative (*will*) serves the following purposes:

- (a) appoints you as the personal representative; and
- (b) allows the probate to begin once you have accepted your appointment and letters testamentary have been issued to you.

(3) **Form 4B-305 NMRA, Acceptance of appointment as personal representative (no will) (will).** This form proves that you agree to follow the law when you act as personal representative. You must sign and date this form and affirm in writing under penalty of perjury under the laws of the State of New Mexico that the statements are true and correct. You may submit this form at the same time you submit your application and order. After the judge has signed and filed the Order of informal probate of will and appointment of personal representative (*will*), Form 4B-304 NMRA, the court will file your acceptance and issue Letters testamentary (*will*), Form 4B-307 NMRA, to you.

(4) **Form 4B-307 NMRA, Letters testamentary (will).** After the judge has signed and filed the order and the court has filed your acceptance, you should complete this form and submit it to the court clerk to issue. This form has the following two general purposes:

(a) to officially begin your appointment as personal representative; and

(b) to prove to others that the judge has appointed you as personal representative and that you are qualified to make decisions about the decedent's estate.

You may want to have several copies of the Letters testamentary (*will*), Form 4B-307 NMRA. This is the document that shows people that you are the personal representative. You might even consider getting several certified copies of this document. A "certified copy" is a document on which the court clerk formally indicates that it is a true and correct copy of the original. There is typically a charge to get a certified copy.

B. Step 2. Send out notice that you have been appointed as personal representative and that a probate action is in process. See Section 45-3-705 NMSA 1978. For Step 2 use Forms 4B-401 and 4B-402 NMRA.

(1) **Form 4B-401 NMRA. Notice of informal appointment of personal representative.** Once the judge has appointed you as personal representative, you must send out Form 4B-401 NMRA, Notice of informal appointment of personal representative, within thirty (30) days to the heirs of the decedent, the devisees of the estate, and any person who has filed a demand for notice as described in Paragraph (A)(1) of this rule.

(2) **Form 4B-402 NMRA. Proof of notice.** Once you have completed the mailing, complete and file Form 4B-402, Proof of notice. See Section 45-3-705(D) NMSA 1978.

C. Step 3. Notify creditors that you are in the process of probating the estate (optional). 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 notice to creditors 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. See Sections 45-3-801, 45-3-802, and 45-3-803 NMSA 1978. For Step 3 use Probate Form 4B-501 NMRA. Do not pay any claims until you read Steps 4-7 below.

(1) **Form 4B-501 NMRA, Notice to creditors by publication and notice to creditors by written notice (mailing or other delivery).** A creditor has one (1) year from the date of the decedent's death to submit a claim unless you publish notice in a newspaper. If you publish notice in the newspaper in the county where the probate proceeding is filed that notifies creditors to submit their claims, the time period is shortened from one (1) year after death to four (4) months after the first day you publish notice. In order to shorten the time period for claims, notice to creditors must be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the county. If you publish the notice to creditors in the newspaper for three (3) consecutive weeks, the newspaper will give you an affidavit of publication that indicates that the notice was published. Give the affidavit to the probate court clerk for filing. The only method for shortening the time to known creditors or to those creditors that can be reasonably ascertained is to provide such creditors with actual written notice.

If you know who the creditors are, you may deliver written notice to known creditors. Form 4B-501 NMRA provides the option of delivering written notice to known creditors in addition to providing notice by publication. If notice is published and written notice is also provided, a creditor has the greater of four (4) months from the date of first publication or sixty (60) days from the mailing or other delivery of the notice to present its claim.

Claims that have not been presented within one (1) year of the decedent's death shall not be paid.

(2) **Secured creditors.** Secured creditors are creditors of the decedent that have a mortgage, deed of trust, secured loan, or security interest in property of the decedent, such as a lien on a vehicle, for example. See Sections 45-1-109 and 45-3-104(B) NMSA 1978. Consider seeking the advice of a lawyer with respect to secured creditors of the decedent.

D. Step 4. Prepare an inventory, meaning gather, value, and list the assets of the estate, and determine the debts of the estate. For Step 4 use Form 4B-601 NMRA, Inventory. Within ninety (90) days of your appointment as personal representative, you must prepare an inventory of the assets of the estate. See Sections 45-3-706 to 45-3-708 NMSA 1978. Form 4B-601 NMRA, Inventory, is provided as a model. The inventory must list the items owned by the decedent in reasonable detail and give the estimated value on the date of death of the decedent for each item. It must also give the type and amount of any debt owed for the item, such as debt secured by a lien or mortgage. You must mail the inventory to interested people who request it. See Section 45-3-706 NMSA 1978. Unless ordered by the court to file this document, you are not required to do so, and you are free to keep the information private and out of the public record.

E. Step 5. Distribute the family and personal property allowances. This Step, along with Steps 6 and 7, are at the heart of the probate process, and you should ensure that they are properly completed. In doing so, you should seriously consider consulting with a lawyer knowledgeable about the probate process. Additionally, check with your local library for available resources.

(1) **Distribute the family allowance.** You must pay the family allowance of thirty thousand dollars (\$30,000) to the surviving spouse. Unless the surviving spouse

affirmatively waives the right to the family allowance, the spouse is entitled to the family allowance, even if the spouse is disinherited under the decedent's will. If there is no surviving spouse, you must pay the family allowance to each minor child and to each dependent child of the decedent. The family allowance is to be divided equally among all the minor and dependent children. See Section 45-2-402 NMSA 1978.

(2) ***Distribute the personal property allowance.*** After payment of the family allowance, you must distribute the personal property allowance, in a value not to exceed fifteen thousand dollars (\$15,000), to the surviving spouse from household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the personal property allowance must be distributed to the decedent's children who are devisees under the decedent's will or who are entitled to a share of the estate under Section 45-2-302 NMSA 1978. If the value of these items is less than the personal property allowance of fifteen thousand dollars (\$15,000), the remaining value of the personal property allowance shall be paid from other assets to make up any deficiency, if there are assets remaining after you pay the family allowance. See Section 45-2-403 NMSA 1978.

F. Step 6. Pay the costs and expenses of administration and the valid debts of the estate, including all taxes.

(1) ***Pay costs and expenses of administration.*** After the family allowance and personal property allowance are paid, you should next pay the costs and expenses of administration. Those costs and expenses typically include any filing fees you have paid, payment for your time spent working on estate matters, and payment of anyone you employed to assist you with estate matters. There is no set hourly rate for personal representative fees, and you should consider consulting with a lawyer to determine an appropriate, reasonable fee for your services.

(2) ***Pay remaining claims and debts of the estate, including all taxes.*** After you have paid the allowances and costs and expenses of administration, you must pay the remaining valid claims and debts of the estate. If the estate does not have sufficient funds to pay all of the valid claims and debts owed, you must pay the claims and debts in the order approved by law. See Section 45-3-805 NMSA 1978. If there are sufficient assets in the estate and you, as the personal representative, fail to pay the valid claims and debts of the estate, including federal and state taxes, you may be personally liable for any valid claims and debts that remain unpaid.

(3) ***Disputing debts.*** If a creditor makes a claim that you do not think is valid, there is a specific process for objecting to the claim with specific time deadlines. See Section 45-3-806 NMSA 1978. In this case, it is best to seek the advice of a lawyer, because you may be forced to pay an invalid claim if you do not go through the process correctly.

(4) ***Exception to requirement to pay debts.*** There is an exception to the requirement that the personal representative pay the valid debts of the estate. This is when the estate is considered a "small estate." To determine if the estate you are probating is a small estate, see Sections 45-3-1203 and 45-3-1204 NMSA 1978 and Paragraph (H)(3) of this rule. It is best to seek a lawyer's advice about whether an estate qualifies under this exception. Use Form 4B-702 NMRA.

G. Step 7. Distribute the remaining assets of the estate to the devisees of the estate listed in the decedent's will. When you have paid all of the decedent's debts, you should distribute the assets that are left to the devisees listed in the will. Distribution of real estate (land) requires a deed from the personal representative to the distributee. If you have any question about the form of a deed or how to prepare a deed, seek a lawyer's advice.

H. Step 8. Close the estate and probate action. For Step 8 use Forms 4B-602 and 4B-701 NMRA. Once you have completed all of your work as personal representative and at least six (6) months have passed since the appointment of the personal representative if notice to creditors is given, or one (1) year has passed if no notice to creditors is given, you may close the estate. See Section 45-3-1003 NMSA 1978. In order to do this you must first do the following:

(1) **Form 4B-602 NMRA, Accounting.** Send an accounting of everything that you did in your administration of the estate to all of the devisees and those persons who filed a demand for notice. Form 4B-602 NMRA, Accounting, is provided as a model. The accounting should list all assets and liabilities of the decedent, receipts and disbursements made by the personal representative, and remaining assets of the estate. The list of assets and cash into the estate should equal a list of payments and distributions from the estate. The list of payments and distributions includes payments to creditors, payments for administrative expenses, and distributions to devisees or heirs. Unless ordered by the court to file this document, you are not required to do so, and you are free to keep the information private and out of the public record.

(2) **Form 4B-701 NMRA, Verified closing statement of the personal representative.** Complete and mail a copy of Form 4B-701 NMRA, Verified closing statement of the personal representative, to all devisees and to any creditors or other claimants whose claims are neither paid nor barred, and file the verified closing statement with the court.

Your appointment as personal representative will automatically terminate in one (1) year if there are no pending proceedings involving you as personal representative.

(a) **Taxes.** You should ensure that you have complied with all state and federal tax requirements. Closing of the estate with the court does not resolve pending matters with any tax authorities. Contact a tax advisor, the Internal Revenue Service, or the New Mexico Taxation and Revenue Department about this issue.

(b) **Bond.** If you have given the court a lien on your property instead of filing a bond as personal representative and a year has passed since you filed the verified closing statement of the personal representative that closed the estate, you may wish to obtain a release of the property lien. See Section 45-3-1007 NMSA 1978.

(3) **Form 4B-702 NMRA, Verified small estate closing statement of the personal representative.** When the value of the entire estate, less liens and encumbrances, does not exceed the family allowance, personal property allowance, costs and expenses of administration, reasonable necessary medical and hospital expenses of

the last illness of the decedent, and reasonable funeral expenses, the estate is considered a small estate. There are two steps you must take to close a small estate.

(a) *Distribute assets.* Distribute the estate's assets to the persons entitled thereto. You may do this without giving notice to creditors. See Section 45-3-1203 NMSA 1978.

(b) *Prepare closing statement.* Complete and mail a copy of Form 4B-702 NMRA, Verified small estate closing statement of the personal representative, to anyone entitled to a distribution from the estate and to all creditors or other claimants whose claims are not paid or barred. Also send a copy of the accounting for the estate to anyone entitled to a distribution from the estate whose interests are affected by the accounting. File the Verified small estate closing statement of the personal representative, Form 4B-702 NMRA, with the court. See Section 45-3-1204 NMSA 1978.

[Approved, effective September 15, 2000; as amended by Supreme Court Order No. 07-8300-005, effective March 1, 2007; 4B-022 recompiled and amended as 1B-306 by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]