

Title 5 - Opening the Estate

Subtitle 3 - Administrative Probate

Section 5-301 - Nature of Proceeding

(a) **Administrative probate** is a proceeding instituted by the filing of a petition for probate by an interested person **before the register** for the probate of a will or a determination of the intestacy of the decedent, and for the appointment of a personal representative.

(b) Subject to the provisions of § 5–402 of this title, the proceeding may be conducted without prior notice, and is final, to the extent provided in § 5–304 of this subtitle, **subject to the right of an interested person to require judicial probate** as provided in Subtitle 4 of this title.

NOTE FROM THE JUDGES:

A petition for probate may proceed administratively -

1. If there is an original will, the petitioner is the person nominated to serve.
2. If there is no will, the petitioner is an heir with the highest priority to serve.

Title 5 - Opening the Estate

Subtitle 4 - Judicial Probate

Section 5-401 - Nature of Proceeding

(a) **Judicial probate** is a proceeding instituted by:

(1) The filing of a petition for probate by an interested person, or creditor, with the court for the probate of a will; or

(2) A determination of the intestacy of the decedent, and for the appointment of a personal representative.

Subtitle 4 - Judicial Probate

Section 5-402 - When Mandatory

A proceeding for judicial probate shall be instituted at any time before administrative probate or within the period after administrative probate provided by § 5-304 of this title:

(1) At the request of an interested person;

(2) By a creditor in the event that there has been no administrative probate;

(3) If it appears to the court or the register that the petition for administrative probate is materially incomplete or incorrect in any respect;

(4) If the will has been torn, mutilated, burned in part, or marked in a way as to make a significant change in the meaning of the will; or

(5) If it is alleged that a will is lost or destroyed.

NOTE FROM THE JUDGES:

In addition to the above, a petition for probate must proceed judicially with a hearing if -

1. There are two or more petitioners.
2. There is an original will and the petitioner is not nominated in the instrument to serve as personal representative.
3. There is a copy of a will and all interested parties have not consented to its admittance into probate.
4. There is no will, the petitioner does not have the highest priority to serve and does not have consents from all interested parties to serve.

All judicials are considered controversial. Even if no one objects in writing, that does not preclude an interested party from objecting in person during the hearing.

During a hearing with two or more competing petitions for appointment as PR, if the parties are extremely contentious, the Court may find it in the best interest of the estate and all interested persons to appoint a disinterested member of the bar to serve as PR.

Title 5 - Opening the Estate

Subtitle 6 - Small Estates

Section 5-601 - Administration in Accordance With Subtitle

(a) If the property of the decedent subject to administration in Maryland is established to have a value of \$50,000 or less as of the date of the death of the decedent. . .

(c) If the surviving spouse is the sole legatee or heir of the decedent. . . the property of the decedent subject to administration in Maryland is established to have a value of \$100,000 or less as of the date of the death of the decedent. . .

NOTE FROM THE JUDGES:

If all paperwork is in order and the personal representative has met all requirements, then the small estate may open and close solely with the register of wills, without any court involvement.

The opening and closing of a small estate without issue is the only instance of no court action.

All other matters require the judges' attention.

REGULAR ESTATES

Estates with total property value over \$50,000, or over \$100,000 if the spouse is the sole heir, are regular estates with additional filing requirements, including an Account and an Inventory.

ADMINISTRATIVE WORK of the COURT

EXAMPLES of paperwork reviewed in chambers:

Accounts

The Court must review accounts after an auditor from the register's office has reviewed. If the Court has no questions or comments to be addressed by the Personal Representative and/or the auditor, then the Court will sign an Order approving the Account.

Petition for Personal Representative's Commissions

The Court ensures that the Personal Representative has stated in detail what was done on behalf of the estate to earn commissions. The Court verifies that the request does not exceed the statutory formula for fees (based on the value of the estate). The Court may sign an Order granting the Petition, or if there are concerns about the content, ask for additional information or for the matter to be set in for hearing.

Petition for Attorney's Fees

The Court ensures that the Attorney has stated in detail what was done on behalf of the estate to earn fees. The Court may sign an Order granting the Petition, or if there are concerns about the content, ask for additional information or for the matter to be set in for hearing.

Petition to Accept Value

Personal Representative requests the Court to accept the value assigned to personal property without a professional appraisal.

Petition for Sale of Real Property

Personal Representative requests the Court for permission to sell real property below the value assigned as of date of death.

HEARINGS (BESIDES JUDICIALS)

EXAMPLES:

Show Cause

The register will ask the Court to issue a Show Cause to a Personal Representative to attend a hearing to explain to the Court why a requirement has not been fulfilled.

Examples:

1. Failure to file Notice of Publication (Small and Regular Estates)
2. Failure to file Information Report (Small and Regular Estates)
3. Failure file Amended Schedule B (Small Estates)
4. Failure to file Inventory (Regular Estates)
5. Failure to post Bond (Small and Regular Estates)
6. Failure to file an Account (Regular Estate)
7. Failure to Amend or Correct an Account (Regular Estate)

8. Why the Estate has not been closed or why distribution has not been made.

9. Failure to comply with a prior court order

Contempt

If a Personal Representative does not appear at a Show Cause hearing, then the Court will issue a Contempt or Contempt and Removal. If the Personal Representative does not appear at the Contempt hearing, then the Court may issue a Contempt and Removal or a writ for arrest. If the Personal Representative does not appear at the Contempt and Removal hearing, then the Court may issue a writ for arrest (body attachment) or simply remove the Personal Representative and appoint a Successor Personal Representative.

NOTE FROM THE JUDGES:

A Contempt and Removal hearing becomes a matter in controversy if an interested person appears to testify as to why the PR should be removed.

Other Show Causes

A party may request that a Show Cause be issued against another for various reasons such as why assets have not been turned over to the Personal Representative or why a judgment should not be issued against a party for taking money from the estate.

Claims

Someone has filed a claim against the estate, the personal representative has disallowed the claim or not, and the claimant requests a hearing for the Court to determine whether the claim is valid.

Types of claims: medical, credit cards, contracts, child support, etc.

Exception to Account

An heir or legatee does not agree with the Account that the Personal Representative prepared for various reasons such as all property not accounted for, all expenses not accounted for, or questionable expenses.

Petition to Remove the Personal Representative

An heir or legatee requests that the Personal Representative be removed for failure in fiduciary duties to the estate.

Objections to Petitions for Attorney's Fees

An heir or legatee does not believe that the request for fees is fair, should be reduced or not paid at all.

Objections to Petitions for Personal Representative's Commissions

An heir or legatee believes that the Personal Representative did not earn the commissions requested and should be reduced or not paid at all.

Status of Distribution

An heir or legatee alleges to not have received distribution from the Estate as indicated in the Account.

Overall status of estate

For example, an heir or legatee believes that the Estate has been opened for too long and wants to know when the Personal Representative plans to close the Estate. The Court on its own may ask for a status.

NOTE FROM THE JUDGES:

Any of the above hearings can last anywhere from a half hour to two - three hours.

SPECIALLY SET HEARINGS (those which require at least a half day, but usually one or more days)

Examples

Caveats A party alleges that a will is not valid for one or more of the following:

1. Testator (person who wrote the will) lacked capacity (can require medical testimony)
2. Someone exerted undue influence over the testator to create the will
3. There was fraud/duress
4. The testator did not sign the will
5. The witnesses are not credible or did not see the testator sign the will
6. There is an insane delusion

Determination of Heirs

Examples:

1. Dispute as to whether someone is a child of the decedent or child of a pre-deceased heir
2. Equitable Adoption
3. Common law spouse
4. More than one person claiming to be a spouse

Augmented Estate

A spouse has not been named in the Will. Spouse files the necessary paperwork to claim an elective share. The Court must determine how much the spouse is entitled based on various factors, including a calculation that involves non-probate property. The Court must also apply a number of subjective factors by utilizing evidence and testimony to determine if the amount of the spousal share should be reduced from the basic calculation.