



# DECEDENT'S ESTATE PROCEDURES

JANUARY 2025







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#### **About the North Carolina Judicial Branch**

The mission of the North Carolina Judicial Branch is to protect and preserve the rights and liberties of all the people as guaranteed by the Constitutions and laws of the United States and North Carolina by providing a fair, independent and accessible forum for the just, timely and economical resolution of their legal affairs.

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The mission of the North Carolina Administrative Office of the Courts is to provide services to help North Carolina's unified court system operate more efficiently and effectively, taking into account each courthouse's diverse needs, caseloads, and available resources.



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## IMPORTANT INFORMATION

- When someone dies, some or all of the deceased person's property may transfer directly to others because of legal arrangements made by the deceased person before death. However, in many situations, a representative for the deceased person must be appointed by the court to collect the deceased person's assets, pay the deceased person's valid debts, and distribute the deceased person's property to the proper persons or entities.

Estate administration is a process for handling a person's assets and debts after that person's death. Some estates are administered by "full administration," which is a more formal process. However, there are other legal processes for estate administration, often referred to as "alternatives" to full administration, that may be utilized to collect and distribute a decedent's assets with a much simpler process depending on the circumstances.

Unless the decedent set up complete alternatives to court-supervised estate administration prior to death, estate administration is handled through the courts, primarily in the office of the appropriate clerk of superior court. In full administration, the clerk of superior court gives authority to a personal representative of the decedent who inventories the decedent's assets, gives public notice to the decedent's creditors, pays the valid debts of the decedent, and distributes the decedent's remaining property to the person(s) who were named as beneficiaries in the decedent's will, if there is one, or to the person(s) entitled by law if there is no will.

- This *Decedent's Estate Procedures* document, which is numbered as form AOC-E-850, is provided as a public service to assist persons who are involved with a decedent's estate. The processes described herein **are not an exhaustive list**. The intent is to highlight some of the more common processes utilized. **It is not meant to be a substitute for legal advice.**
- The Clerk of Superior Court in all 100 counties in North Carolina serves as the judge of probate and **cannot practice law or give legal advice**. Therefore, you should not ask the clerk or the clerk's staff to prepare your documents or to advise you on the completion of forms or any legal issue.
- If you need advice, **you should consult an attorney**, especially regarding decisions about what type of estate administration or proceeding to initiate, disbursement of any funds, questions about handling insolvent estates, or questions concerning federal and state taxes payable by the estate.
- You must keep accurate records and file timely and accurate accounts.
- Court costs and fees must be paid to the clerk of superior court. You will be informed about the amounts by the clerk's office.
- Additional information, through FAQs, is available on the Judicial Branch website at [www.nccourts.gov](http://www.nccourts.gov) under the heading "Help Topics" and category "Wills and Estates."



# YEAR'S ALLOWANCE

## 1. Year's Allowance for Decedents Dying On or Before February 29, 2024 [Application And Assignment Year's Allowance, AOC-E-100]

**NOTE:** The laws related to year's allowance were modified through S.L. 2024-120 in 2023 and the information reflected in this section 1 of Year's Allowance applies to decedents dying on or before February 29, 2024. For decedents dying on or before February 29, 2024, the deadline to apply for an allowance is within one year after the date of the decedent's death.

- (a) A surviving spouse of a decedent (both testate or intestate), who has not forfeited the right, is entitled to an allowance of \$60,000 for the surviving spouse's support. To claim the spouse's allowance, the decedent or the surviving spouse must have been a resident of North Carolina on the date of the decedent's death.
- (b) A child of the decedent is also entitled to an allowance of \$5,000 for the support of a child. [G.S. 30-15, G.S. 30-17]. "Child" includes all of the following:
  - a child under the age of 18, including an adopted child
  - a child with whom the widow may be pregnant at her husband's death
  - a child who is under the age of 22 and a full-time student in any educational institution
  - a child under the age of 21 who has been declared mentally incompetent
  - a child under the age of 21 who is totally disabled, or
  - any other person under the age of 18 residing with the parent at the time of death to whom the deceased or surviving parent stood in loco parentis.
- (c) The allowance will be from cash or personal property of the deceased or a combination of both, but does not include real estate. An application for a year's allowance for the surviving spouse and/or dependent child(ren) may be filed with the clerk at any time within one (1) year of the decedent's death. The clerk or magistrate may hold a hearing on the application. The allowance will be entered on the application form by the clerk or magistrate. The allowance should be paid as a priority claim before any other claims against the estate are paid.





## 2. Year's Allowance for Decedents Dying on or after March 1, 2024 [Petition and Assignment Year's Allowance, AOC-E-100]

**NOTE:** The laws related to year's allowance were modified through S.L. 2024-120 in 2023 and the information reflected in this section 2 of Year's Allowance applies to decedents dying on or after March 1, 2024.

- (a) A surviving spouse of a decedent (both testate or intestate), who has not forfeited the right, is entitled to an allowance of \$60,000 for the surviving spouse's support.
- (b) A child of the decedent is also entitled to an allowance of \$10,000 for the support of a child. [G.S. 30-15, G.S. 30-17]. "Child" includes all of the following:
  - every child of a decedent who is under the age of 21 years at the time of the decedent's death, including an adopted child or a child in utero, and
  - every child who is under the age of 21 years at the time of the decedent's death with whom the decedent stood in loco parentis at the time of death.
- (c) The allowance will be from cash or other personal property of the deceased or a combination of both, but does not include real estate. A verified petition for a year's allowance for the surviving spouse and/or child(ren) may be filed with the clerk at any time after a decedent's death. However, if a personal representative has been appointed by the court, the spouse and/or child(ren) must file the petition within six (6) months of the appointment of the personal representative. The clerk of superior court ascertains whether there is an entitlement to an allowance and, if so, enters an order setting forth the personal property to be awarded and the value thereof. The clerk may determine the petition is contested and the clerk must then direct the petitioner to initiate a contested estate proceeding to determine the allowance. The allowance should be paid as a priority claim before any other claims against the estate are paid.



# FULL ADMINISTRATION OF AN ESTATE

## 1. Will, Letters, Executor, Administrator, Personal Representative

- (a) When a person dies with a valid will, the person is said to have died “testate.” When a person dies without a will, the person has died “intestate.”
- (b) When a person has died, a search should be made to see if that person (the decedent) left a will. A search should also be made to determine if the decedent had a safe deposit box, since the will and other valuable papers or items may be in the safe deposit box. If a will is discovered in the safe deposit box, it must be filed with the Clerk of Superior Court. [G.S. 28A-15-13(d)]. If there is a valid will that is probated, the Clerk of Superior Court, upon the filing of an application [Application For Probate And Letters, AOC-E-201] that is sworn before an officer authorized to administer oaths such as a clerk or notary public, issues “letters” to the person who qualifies as executor of the will. “Letters Testamentary” [Letters, AOC-E-403] are the official written authorization for a person to carry out the responsibilities of executor of a will.
- (c) If the decedent dies intestate, that is, without leaving a will, “letters” are issued by the Clerk of Superior Court, upon application, [Application For Letters Of Administration, AOC-E-202] to the person who qualifies as administrator of the estate. “Letters of Administration” [Letters, AOC-E-403] are the official written authorization for a person to carry out the responsibilities of administrator of an estate. [G.S. 28A-4-1(b)].
- (d) The term “personal representative” is used to refer to either an executor or an administrator. This person has a fiduciary duty to act in best interests of the estate.

## 2. Qualification as Personal Representative

- (a) *Application to Qualify* [Application For Probate And Letters, AOC-E-201, or Application For Letters Of Administration, AOC-E-202]

A person who seeks to qualify as a personal representative must apply to the Clerk of Superior Court, by sworn affidavit before an officer authorized to administer oaths such as a clerk or notary public, typically on a form provided by the clerk’s office. The form calls for a preliminary inventory of all assets of the decedent **as of the date of death**. Therefore, the applicant should attempt to have a general knowledge of the decedent’s real estate, bank accounts, stocks, bonds, motor vehicles, and other personal property, and an estimated value of these assets, to complete the application. The instructions for that form assist you in completing the form. [G.S. 28A-6-1(a)].

### b) *Qualified Persons*

If the decedent did not name an executor in the will or dies intestate (without a will), the clerk of superior court will grant letters of administration to a person(s) who applies and is qualified to serve, in the following order:





- (1) The surviving spouse of the decedent;
- (2) Anyone who is to receive property as indicated by the will of the decedent;
- (3) Anyone who is entitled to receive property of the decedent by law in the absence of a will;
- (4) Any next of kin, with priority given to a person who is of closer kinship pursuant to G.S. 104A-1;
- (5) Any creditor to whom the decedent became obligated prior to death;
- (6) Any person of good character residing in the county who applies with the Clerk of Superior Court.
- (7) Any other person of good character who is not disqualified in accordance with G.S. 28A-4-2.

[G.S. 28A-4-1].

(c) *Disqualified persons*

No person may serve as a personal representative who:

- (1) Is under 18 years of age;
- (2) Has been adjudged incompetent by the court and remains under such disability;
- (3) Is a convicted felon whose citizenship has not been restored;
- (4) Is a nonresident of this state who has not appointed a resident of the state to accept service of process in all actions or proceedings with respect to the estate;
- (5) Is a corporation not authorized to act as a personal representative in this state;
- (6) Has committed acts which by law constitute a forfeiture of the right to serve;
- (7) Is illiterate;
- (8) Is a person whom the Clerk of Superior Court finds otherwise unsuitable;
- (9) Was previously designated as executor of the estate but has renounced that office or otherwise chose not to carry out the duties of the personal representative. [G.S. 28A-4-2].
- (10) Is a person who is employed by, acts as an agent for, serves as legal counsel for, or conducts business in any contractual capacity with a property finder, as defined in G.S. 116B-52(11a), who has entered into an agreement subject to G.S. 116B-78 to locate the estate property defined by the agreement.

(d) *Oath/Affirmation* [Oath/Affirmation, AOC-E-400]

A person qualifying as personal representative must take an oath or make an affirmation to carry out the duties faithfully and honestly. [G.S. 28A-7-1].

(e) *Bond* [Bond, AOC-E-401]

Generally, an executor of a will who is a North Carolina resident is not required to furnish a bond before being authorized to act as executor, unless the will expressly requires that bond be furnished. An administrator of an estate **is** required to furnish a bond unless all the heirs are 18 years of age or older, of sound mind, and have filed written waivers [*Waivers Of Personal Representative's Bond*, AOC-E-404] of the bond requirement. While bond may be excused under other provisions of 28A-8-1, **bond cannot be waived under the provisions of 28A-8-1(b)(6) when an administrator resides outside of North Carolina, unless the administrator is the sole heir of the decedent.**



A personal representative must give bond before letters issue, unless there is a statutory exception. A bond is **not** required of:

- (1) a resident executor **if** the express terms of the will **do not** require the resident executor to give bond;
- (2) a nonresident executor (or a resident executor who moves from this State subsequent to appointment) who (i) has appointed a resident agent to accept service of process as provided in G.S. 28A-4-2(4) and (ii) the express terms of the will excuse the nonresident executor from giving bond;
- (3) a nonresident executor when (i) there is a resident executor named who has qualified as coexecutor, (ii) the express terms of the will **do not** require them to give bond, and (iii) the clerk of superior court does not find that such bond is necessary for the protection of the estate;
- (4) a personal representative appointed solely for the purpose of bringing an action for the wrongful death of the deceased until such time as the personal representative shall receive property into the estate of the deceased;
- (5) a personal representative that is a trust institution licensed under G.S. 53-159;
- (6) a personal representative of an intestate who resides in the State of North Carolina when all of the heirs of the decedent are over 18 years of age and file with the clerk of superior court a written waiver instrument agreeing to relieve the personal representative from the necessity of giving bond;
- (7) a personal representative where the personal representative receives all the property of the decedent;
- (8) an administrator with the will annexed who resides in the State of North Carolina when all of the devisees of the decedent are over 18 years of age and file with the clerk of superior court a written waiver instrument agreeing to relieve the administrator with the will annexed of the necessity of giving bond.

[G.S. 28A-8-1].

### 3. Authority of Personal Representative

A personal representative is authorized to collect assets, pay claims, and make all disbursements necessary to settle an estate and to distribute the assets in an orderly, accurate, and timely manner. Before the personal representative can sell any real property of the decedent's estate to generate cash with which to pay debts of the estate, the personal representative may need to petition the clerk of superior court for permission to sell such real estate. Depending on the terms of a will, an executor may not need the clerk's permission to sell the real property. [G.S. 28A-13-3, G.S. 28A-15-1, G.S. 28A-17-1].

### 4. Notice to Creditors [*Affidavit Of Notice To Creditors*, AOC-E-307]

A personal representative must cause a notice for creditor's claims against the estate to be placed in a newspaper qualified to publish legal advertisements which is published in the county where the estate is being





administered, unless the only asset of the estate consists of a wrongful death claim for damages. If there is no qualified newspaper printed in the county, then:

- (i) the notice must be published in a newspaper of general circulation in the county and posted at the courthouse, or
- (ii) a copy of the notice must be posted at the courthouse and in four other public places in the county.

Notices to creditors must be published once a week for four (4) consecutive weeks and should state that claims must be filed or presented to the personal representative by a date certain, which date is at least three (3) months from the date of first publication of the notice. **Posted** notices must state that claims must be filed or presented to the personal representative by a date certain, which date is at least three (3) months from the date of first posting of the notice. Within 75 days after the granting of letters and prior to filing proof of publication and/or posting with the clerk of superior court's office, the personal representative must also personally deliver or send by first class mail a notice about how, when, and where to file claims against the estate to all creditors (including the Department of Health and Human Services, Division of Medical Assistance, if at the time of the decedent's death the decedent was receiving Medicaid) who are actually known or can be discovered upon reasonable investigation. However, no notice need be delivered or mailed with respect to any claim that the personal representative already recognizes as valid and has or will pay the claim. Following publication, a copy of the notice, an affidavit from the newspaper attesting to publication, and, as applicable, an affidavit from the personal representative attesting that he or she has mailed or personally delivered the notice, must be filed with the Clerk of Superior Court at the time the Inventory required by G.S. 28A-20-1 is filed. [G.S. 28A-14-1, G.S. 28A-14-2, G.S. 28A-19-1].

## 5. Filing an Inventory [*Inventory For Decedent's Estate*, AOC-E-505]

Within three (3) months from the date of qualification, the personal representative must file with the clerk of superior court's office, on oath, an accurate inventory of the estate, giving descriptions and values **as of the date of death** of all real and personal property of the decedent which have come to the hands of the personal representative or to the hands of any person for the personal representative. The personal representative should obtain copies of signature cards and deposit contracts associated with any joint accounts from the depository financial institution and submit them with the inventory. Clerks may require supporting documentation for the information provided on the inventory. [G.S. 28A-20-1].

Property discovered after an inventory has been filed must be reported on a supplemental inventory. [G.S. 28A-20-3]. Income of the estate, property acquired by the estate after the decedent's death, or asset conversions (e.g., sale of real estate or stock, foreclosure of deed of trust, etc.) must be reported on the next accounting. [G.S. 28A-21-1].

## 6. Real Property – Rents, Expenses

Rent from real property that is inherited by will or intestate law is not income to the estate and estate funds may not be used to pay real estate expenses incurred after the date of death, such as mortgages, taxes, insurance, or utilities.



If real property not willed to the estate is needed to pay claims, it can be brought into the estate by filing a special proceeding before the clerk. [G.S. 28A-17-1].

## **7. Encumbered or Mortgaged Real or Personal Property**

When items of real or personal property are specifically willed to an individual/entity, that individual/entity takes the property subject to any encumbrances thereon, and without a right to have assets of the estate discharge the secured obligation. [G.S. 28A-15-3]. This does not limit the remedies of a secured creditor against the heir or the estate if the heir or estate fails to make payment on the encumbrances.

If items of real or personal property are assets of (titled to) the administered estate and subject to encumbrances, the personal representative may pay the encumbrance, if that is in the best interests of the estate. However, payment of the encumbrance must be taken into account in calculating the division of the estate and does not increase the share of the distributee of that asset. [G.S. 28A-15-4].

## **8. Claims**

All claims against the decedent's estate which arose before the death of the decedent, other than certain real estate warranty claims, claims of the United States, and taxes claims of the State of North Carolina, and claims covered by insurance, must be presented to the personal representative by the date specified in the notice to creditors, or forever be barred. [G.S. 28A-19-3].

### **(a) *Insufficient Funds To Pay All Claims***

In order to determine if there will be sufficient funds with which to pay claims, the personal representative should not pay any claims until after the time for filing claims has expired. If the estate is not sufficient to pay all of the creditors in every class, the personal representative should pay in full those classes of creditors for which there is sufficient money, starting with those at the top of the priority list as listed in paragraph 9(b). Then the personal representative should distribute the remaining money proportionally among each creditor of the next highest class. [G.S. 28A-19-6].

### **(b) *Order Of Priority Of Claims***

After payment of the costs and expenses of administration, *and any spouse or child year's allowance*, the personal representative must pay claims against the estate in the following order: [G.S. 28A-19-6]

- (1) Claims which by law have a specific lien on property up to the amount of the value of such property.
- (2) Claims for funeral expenses of up to \$3,500. The balance of funeral expenses, after this amount is given preference, should be paid as all other claims in number 9 below.
- (3) Gravestone and burial costs of up to \$1,500. The balance of gravestone and burial costs, after this amount is given preference, should be paid as all other claims in number 9 below.





- (4) All dues, taxes, and other claims with preference under federal law.
- (5) All dues, taxes, and other claims with preference under the laws of the State of North Carolina or under the laws of local governments in North Carolina.
- (6) Judgments of any court of competent jurisdiction within the State of North Carolina, docketed and in force, to the extent to which the judgments were liens on the property of the decedent at the time of death, and Medicaid claims filed under G.S. 108A-70.5.
- (7) Wages due any employee of the decedent for a period of not more than twelve (12) months immediately preceding the death of the decedent; the cost of any medical services received during the twelve (12) months preceding the death of the decedent; and the cost of necessary drugs and all other medical supplies incurred during the **last** illness of the decedent (not to exceed 12 months).
- (8) A claim for equitable distribution.
- (9) All other claims (for example, credit card debt), with farm operation expenses through harvest under G.S. 28A-13-4 to be preferred over all such other claims at this priority level.

## 9. Filing Individual and Estate Tax Returns

Depending on the value of the decedent's gross estate combined with adjusted taxable gifts and any specific exemption, and depending on the date on which the decedent died, state and federal taxes may be due and state and federal fiduciary income tax returns may also be required. Following qualification, the personal representative should promptly contact state and federal tax offices or a tax professional to determine what tax information, if any, should be filed with those offices. Relevant tax forms used in settlement of the estate may be obtained from the North Carolina Department of Revenue at 1-877-252-3052. If estate tax returns are filed, the personal representative should obtain closing letters from the taxing authorities and file copies with the clerk.

**If the decedent died on or after January 1, 2013, an estate tax certification under G.S. 28A-21-2(a1) is not required.** If the decedent died prior to January 1, 2013 and if no State estate or inheritance taxes are due, the personal representative should provide the clerk of court with a certification that no estate or inheritance tax returns were required to be filed [*Estate Tax Certification (For Decedents Dying On Or After January 1, 1999, But Prior To January 1, 2013)*, AOC-E-212, or *Inheritance And Estate Tax Certification (For Decedents Dying Prior To January 1, 1999)*, AOC-E-207]. If the decedent died prior to January 1, 2013 and State estate taxes were due, the personal representative must provide the clerk of court with a certificate furnished by the North Carolina Secretary of Revenue, stating the estate tax liability has been satisfied in full.

## 10. Commissions

The personal representative may receive a commission, which is payment for handling the estate. If the will does not establish the amount or method of compensation, or if there is no will, the clerk of superior court may, in his or her discretion, allow a commission of **up to** five percent (5%) of the estate receipts and disbursements.



The clerk will consider the time, responsibility, trouble, and skill involved in the management of the estate. Commissions to personal representatives are accounted for as costs and expenses of administration. The personal representative **must** petition the clerk for approval of a commission, and receive approval from the clerk, **before** making disbursement of the commission. In determining the amount of the commission permitted, the clerk of superior court **may** take into consideration fees paid by the estate for professional services performed in the ordinary course of administering the estate, including services performed by attorneys and accountants. [G.S. 28A-23-3].

### 11. Attorney's Fees

The personal representative may choose to hire an attorney to represent the personal representative in the administration of the estate. [G.S. 28A-13-3(a)(19).] The personal representative may request that the attorney's fees incurred be paid from the estate as necessary charges in the management of the estate. [G.S. 28A-23-3(d)(1).] The clerk has authority to determine whether the fees are reasonable and necessary, and whether the attorney's fees may be paid from estate assets. The personal representative **must** petition the clerk for approval of the attorney's fees, and receive approval from the clerk, **before** making disbursement of the attorney's fees from the estate assets. Payment of attorney fees not approved by the clerk are the personal responsibility of the personal representative who hired the attorney.

### 12. Distribution of Assets

After paying the costs of administration, taxes, and other valid claims against the estate, the personal representative must distribute the remaining assets of the estate in accordance with the will, or, if none, in accordance with the Intestate Succession Act (Chapter 29 of the General Statutes). If general bequests of money (those not payable out of a specified fund) are set forth in the will, yet there is not enough cash or other personal property within the administered estate to pay all such bequests, the personal representative should prorate the amount available among all similarly-situated recipients of general bequests [G.S. 28A-15-5]. The personal representative should obtain receipts from all distributees. [G.S. 28A-22-1].

### 13. Accounting

#### (a) *Inventory*

See page 11, paragraph 5, "Filing an Inventory."

#### (b) *Final Accounting* [Account [ ] Annual [ ] Final, AOC-E-506]

The personal representative or collector **must** file a final accounting (i) within one year of the date on which he





or she qualified, (ii) within six months after receiving a State estate or inheritance tax release, or (iii) within the time to file an annual account pursuant to G.S. 28A-21-1, whichever is later, unless the clerk of superior court has granted an extension of time for good cause. [G.S. 28A-21-2(a)]. The final account is filed after all claims have been paid or otherwise satisfied but may not be filed before the date specified in the notice to creditors. [G.S. 28A-21-2(b)]. If an extension of time has been granted, an annual accounting must be filed within the annual accounting timeframe set forth below.

*(c) Annual Accounting [Account [ ] Annual [ ] Final, AOC-E-506]*

If the estate is not finalized within one year, the personal representative or collector must file a request for the estate to remain open and he or she must also file an initial annual account. The personal representative or collector **must either** file this initial annual accounting no later than 30 days after the expiration of one year from the date on which he or she qualified to serve, **or** file this initial annual accounting after selecting a fiscal year-end date with the accounting to be filed no later than the 15<sup>th</sup> day of the fourth month after the close of the fiscal year he or she selects. If the personal representative or collector choose a fiscal year end-date, the date chosen can be any date that is not more than twelve months from the date of death of the decedent. An annual accounting must be filed every year thereafter until the final accounting is filed. [G.S. 28A-21-1].

*(d) Proof*

All accountings must be accompanied by canceled or imaged checks or other proof satisfactory to the clerk for all disbursements and distributions and for all balances held or invested. (Example: detailed bank statements showing balance held.) [G.S. 28A-21-1].

*(e) Contents of Accountings*

Accountings filed with the clerk of superior court must be signed under oath and contain:

- (1) The period which the account covers and whether it is an annual accounting or final accounting;
- (2) The amount and value of the property of the estate according to the inventory and appraisal, or according to the previous accounting; the manner and nature of any investments; the amount of income and additional property received during the accounting period; and all gains or losses from the sale of any property or otherwise;
- (3) All payments, charges, losses, and distributions;
- (4) The property constituting the balance of the estate, if any, that is on hand at the end of the accounting period;
- (5) Any other facts and information determined by the clerk to be necessary for the clerk to have a full understanding of the accounting. [G.S. 28A-21-3, G.S. 28A-21-1].

The clerk of superior court is required by law to review and audit the final account and any annual accounts that precede the final account. [G.S. 28A-21-2, G.S. 28A-21-1]. North Carolina law provides for consequences in the event that the personal representative or collector fails to render a satisfactory account. See page 16, paragraph 15, "Compelling, Contempt, Jail, and Removal."



#### (f) *Accounting for Wrongful Death Proceeds*

After the completion of a wrongful death lawsuit, the personal representative **must be bonded before receiving the wrongful death proceeds** [unless one of the bond exceptions of G.S. 28A-8-1(b) have been met] and must file a separate accounting concerning the wrongful death proceeds. [*In re Estate of Parish*, 143 N.C. App. 244 (2001)]. Under G.S. 28A-18-2, the proceeds may only be used to pay certain designated expenses, and **the balance can only be distributed to heirs of the decedent under the Intestate Succession Act (Chapter 29 of the General Statutes), regardless of whether or not there is a will.**

The authorized expenses are:

- Reasonable and necessary expenses of bringing the suit, and attorney fees
- Burial expenses of the deceased
- Medicare reimbursement [*Cox v. Shalala*, 112 F.3d 151 (4th Cir. 1997).]
- Reasonable hospital and medical expenses (not exceeding \$4,500) incurred as a result of the injury resulting in death. [The amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the total proceeds recovered after deducting attorneys' fees. This amount is separate and in addition to any Medicaid reimbursement.]

### 14. Discharge of the Personal Representative

When the clerk of superior court approves the final account, the clerk will enter an order discharging the personal representative from further liability in the estate. However, the order may not include a release or discharge of liability for any breach of duty set forth in G.S. 28A-13-10(c). [G.S. 28A-23-1].

### 15. Compelling, Contempt, Jail, and Removal

#### (a) *In the Event of Failure to File the Inventory as Prescribed*

If the personal representative or collector fails to file an inventory as is prescribed by G.S. 28A-20-1, then the clerk of superior court **must** issue an order requiring the personal representative or collector to file the inventory within 20 or more days and to appear and show cause why he or she should not be removed from office in the event that he or she fails to do so. If, within the timeframe specified by the order (which must allow for 20 or more days after service of the order) the personal representative or collector does not make the required filing, and if at a subsequent show cause hearing he or she is found to be in contempt of court and is ordered committed, the clerk may then have the sheriff serve the personal representative or collector with an order of contempt and commitment, and the sheriff will place the personal representative or collector in the county jail until he or she complies with the order to file. The personal representative or collector shall be personally liable for all costs associated with such proceedings. The clerk may also remove the personal representative or collector and appoint someone else to complete the administration of the estate. [G.S. 28A-20-2, G.S. 28A-9-1].





*(b) In the Event of Failure to File a Satisfactory Final or Annual Account*

If the personal representative or collector fails to account as required, or if he or she renders an unsatisfactory account, the clerk of superior court **must** issue an order for the personal representative or collector to render a full and satisfactory account within 20 days after service of the order. If, within 20 days after service of such an order he or she does not make the required filing, and if at a subsequent show cause hearing he or she is found to be in contempt of court and is ordered committed, the clerk may then have the sheriff serve the personal representative or collector with the order of contempt and commitment, and the sheriff will place the personal representative or collector in the county jail until he or she complies with the order to file. The clerk may also remove the personal representative or collector and appoint someone else to complete the administration of the estate. [G.S. 28A-21-4, G.S. 28A-9-1].

*(c) Removal on Other Grounds - After a Hearing*

Letters may be revoked and the personal representative or collector removed after there has been a hearing at which one of the following bases for revocation/removal was found:

- (1) The person to whom they were issued was originally disqualified under the provisions of G.S. 28A-4-2 or has become disqualified since the issuance of letters;
- (2) The issuance of letters was obtained by false representation or mistake;
- (3) The person to whom they were issued has violated a fiduciary duty through default or misconduct in the execution of the person's office, other than acts specified in G.S. 28A-9-2;
- (4) The person to whom they were issued has a private interest, whether direct or indirect, that might tend to hinder or be adverse to a fair and proper administration.
- (5) The person to whom they were issued is employed by, acts as an agent for, or conducts business in a contractual capacity with a property finder, as defined in G.S. 116B-52(11a), who has entered into an agreement subject to G.S. 116B-78 to locate the estate property defined by the agreement.

[G.S. 28A-9-1].

*(d) Removal on Other Grounds - Without a Hearing*

The clerk must revoke letters, without a hearing, if one of the following bases for summary revocation/removal is found:

- (1) After letters of administration or collection have been issued, a will is subsequently admitted to probate;
- (2) After letters testamentary have been issued, the will is set aside, or a subsequent testamentary paper revoking the appointment of the executor is admitted to probate;
- (3) A personal representative or collector required to give a new bond or furnish additional security pursuant to G.S. 28A-8-3 fails to do so within the time ordered;
- (4) A nonresident personal representative refuses or fails to obey any citation, notice, or process served on that nonresident personal representative or the process agent of the nonresident personal representative;



- (5) A trustee in bankruptcy, liquidating agent, or receiver has been appointed for any personal representative or collector, or any personal representative or collector has executed an assignment for the benefit of creditors;
- (6) A personal representative has failed to file an inventory or an annual account with the clerk of superior court, as required by Article 20 and Article 21 of this Chapter, and proceedings to compel such filing pursuant to G.S. 28A-20-2 or 28A-21-4 cannot be had because service cannot be completed because the personal representative cannot be found;
- (7) A personal representative or collector is a licensed attorney, and the clerk is in receipt of an order entered pursuant to G.S. 84-28 enjoining, suspending, or disbarring the attorney. [G.S. 28A-9-2].





## SMALL ESTATES – COLLECTION BY AFFIDAVIT

If no application for appointment of a personal representative is pending or has been granted, the following simplified procedure may be used after thirty (30) days from the decedent's death:

if the decedent died on or before **9/30/09**, and

if the value of the decedent's personal property, less liens and encumbrances, does not exceed **\$10,000** [\$20,000 if the surviving spouse is the collector and the sole heir or devisee] (regardless of the value of any real property)

if the decedent died on or after **10/1/09**, and

if the value of the decedent's personal property, less liens and encumbrances, does not exceed **\$20,000** [\$30,000 if the surviving spouse is the collector and the sole heir or devisee] (regardless of the value of any real property)

if the decedent died on or after **1/1/12**, and

if the value of the decedent's personal property, less liens, encumbrances, **and spousal allowance**, does not exceed **\$20,000** [\$30,000 if the surviving spouse is the collector and the sole heir or devisee] (regardless of the value of any real property).

### [G.S. 28A-25-1]:

#### 1. Affidavit for Collection [*Affidavit For Collection Of Personal Property Of Decedent (For Decedents Dying On Or Before Dec. 31, 2011)*, AOC-E-203A; *Affidavit For Collection Of Personal Property Of Decedent (For Decedents Dying On Or After Jan. 1, 2012)*, AOC-E-203B]

An executor, heir, or creditor of the decedent, or the public administrator of the county, may file an affidavit with the clerk of superior court on a form provided by the clerk's office, requesting authorization to proceed with collection and administration of the estate. [G.S. 28A-25-1(a), G.S. 28A-25-1.1(a)]. **NOTE:** *If a sale of real estate by the heirs is foreseeably necessary or desirable, a full administration with notice to creditors may be necessary.*

#### 2. Distribution of Assets and Payment of Claims

Upon filing the affidavit with the clerk of superior court, the person making the affidavit is authorized to proceed with collection of the decedent's personal property and with distribution of the property in the following order of priority:

- (1) Payment of the year's allowance of the surviving spouse and child(ren), if any;
- (2) Payment of debts and claims against the estate in the order set out in paragraph 9(b) of the section of this pamphlet dealing with Full Administration Of An Estate;
- (3) Distribution of the remainder of the personal property, if any, to the persons entitled to it by the will, or, if no will exists, to the persons specified by the Intestate Succession Act (Chapter 29 of the General Statutes). [G.S. 28A-25-3(a)(1)].



### 3. Closing Affidavit [*Affidavit Of Collection, Disbursement And Distribution, AOC-E-204*]

After the distribution has been completed, an affidavit **must** be filed with the clerk of superior court showing collection, disbursement and distribution of the personal property. This closing affidavit must be filed within ninety (90) days after the date of filing of the qualifying affidavit, unless the clerk has granted an extension of time. [G.S. 28A-25-3(a)(2)].





## SUMMARY ADMINISTRATION

The surviving spouse of a decedent who died with or without a will may petition the clerk of superior court for an order of summary administration if the spouse is the sole heir or devisee of the decedent. An order of summary administration will permit the spouse to proceed with the collection and distribution of the decedent's property without the formality of a full administration. By obtaining the order, the *surviving spouse assumes all liabilities* of the decedent to the extent of the value of the property received. **NOTE: Fees are collected when the petition is filed. If a sale of real estate by the surviving spouse is foreseeably necessary or desirable, a full administration with notice to creditors may be necessary.** [Article 28 of Chapter 28A of the General Statutes].

## IMPORTANT INFORMATION, DATES, AND CHECKLIST

[illegible]





# ADMINISTRATIVE OFFICE *of the* COURTS

901 Corporate Center Drive  
Raleigh, NC 27607  
919-890-1000  
[NCcourts.gov](http://NCcourts.gov)

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