

# *ESTATE ADMINISTRATION*

*Volunteer Lawyers Program  
Alabama State Bar*

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## **PREFACE**

This Manual is intended as a general overview for use in administration of estates in Alabama. It should not be viewed as a thorough discourse of legal issues in this area. For example, tax issues are only briefly addressed. If more detail is required, or technical issues arise, a practitioner should independently research these matters or should consider referring the client to an attorney with expertise in this area.

I would like to give special recognition to Terrill W. Sanders and Lynn Belt Schuppert whose materials have served as a principal source for this manual.

Nancy C. Hughes, Esq., Editor

# ESTATE ADMINISTRATION\*

## 1. INITIAL CLIENT/FAMILY CONSULTATION.

During the attorney's initial consultation with the client and/or family of the decedent, the attorney must endeavor to obtain as much information as possible concerning the affairs of the decedent and should advise the client to bring all appropriate records to the meeting. However, the attorney should never lose sight of the fact that the family has just experienced a loss. The attorney should be sensitive to the family's grieving process and should not push too hard to discuss the decedent's business affairs. On the other hand, many families seem to find solace in busying themselves with the business at hand. To facilitate a prompt and professional probate process, the attorney should obtain the following:

- ? Names, residences, and ages of the decedent's heirs (Ala. Code § 43-8-1 (1975 and Supp. 1998)<sup>1</sup>, devisees, surviving spouse, interested persons, and possible illegitimate children.
- ? Name(s) of custodial parent(s) or guardian(s) of any minor or incapacitated heir(s).
- ? Original will. Section 43-8-270 requires that after the death of a testator, and upon request of an interested person, any person having custody of the testator's will shall deliver it with reasonable promptness to a person able to secure its probate or to an appropriate court. If the will is in a safe deposit box, and the decedent's contract with the bank did not include any other authorized signatory, the bank will probably require a court order and the presence of a court representative before the box may be entered to obtain the original will.
- ? Nature, location, and ownership of all assets of the decedent. Collect all deeds, insurance papers, checkbooks and other banking information, stocks and bonds, and pay stubs.
- ? List of all liabilities, including names and addresses of all creditors. Collect any mortgage notes, loan papers, receipts, and accountings of all outstanding bills.
- ? Tax records including income tax and gift tax returns for the last three years.
- ? Identity of proper person to file for Letters Testamentary, §§ 43-2-22 and 43-2-27, or Letters of Administration, § 43-2-42. Note that if all executors named in the will are unwilling or unable to serve, and the residuary and principal legatees are unable or unwilling to serve with Letters of Administration with the will annexed, then the court must be petitioned to grant letters of administration in the same manner as for intestacy.

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<sup>1</sup>All code citations are to the 1975 Alabama Code through the 1998 Supplement.

? Location of proper place to file for Letters Testamentary, § 43-8-162, or Letters of Administration, § 43-2-40. A decedent's will must be proved in the probate court of the county in which: (1) the testator was an inhabitant at the time of his death; (2) the testator died if he left property therein and was not an inhabitant of the state; (3) the testator left assets even if he died out of the county and was not an inhabitant of the state; (4) assets of the testator are brought after his death and he was not an inhabitant of the state; or (5) the testator designated that his will should be probated if the testator owned property in such county at the time of his death. § 43-8-162. The guidelines for determining the proper probate court in which to file for Letters of Administration are similar except that there obviously can be no designation. § 43-2-40.

? Engagement agreement.

## **2. PROPERTY PASSING BY OPERATION OF LAW.**

Probate may be avoided by certain transfers of assets defined by statute or by the terms of the instrument creating the asset.

### **2.1. Jointly Held Property.**

In Alabama, interests in jointly held property, both real and personal, generally pass to the surviving joint tenant(s) upon the death of a joint tenant only if the right of survivorship is clearly stated in the governing instrument. Otherwise, the interest descends and vests as if the interest had been severed. § 35-4-7.

However, with respect to joint bank accounts, § 5-24-11 determines ownership during the lifetimes of multiple account holders. Section 5-24-11 provides for a net contribution test. If the account holders are married, and in the absence of other proof, the account is presumed to be owned 50/50.

At the death of a holder, § 5-24-12 provides that the survivor or survivors own the account, even if the account did not expressly provide for survivorship and regardless of whether the account read “and” or “or”. **Section 5-24-12 constitutes a radical change from prior law and applies to new accounts created after 3-1-98 and to existing accounts created prior to 3-1-98 unless there is a “clear indication of a contrary intent”.** § 5-24-34.

### **2.2. Small Deposits of Less than \$5,000.**

When a decedent leaves deposits in a bank or credit union, not exceeding \$5,000 per institution, the bank may, after 60 days from the date of death and in the absence of Letters Testamentary or Letters of Administration, pay the deposits to the surviving spouse of the decedent, or if there is none, to the children of the decedent. §§ 5-5A-38, 5-5A-39, 5-17-16. The same provisions apply to savings and loan associations, except that the maximum amount on deposit cannot exceed \$1,000.00. § 5-16-46.

### 2.3. Instruments Payable to Designated Beneficiaries.

Insurance, annuities, certain employee benefits and death benefits, and assets held in trust, pass to a designated beneficiary by the terms of the governing instrument. Unless the decedent's estate is designated as the beneficiary, or unless the assets revert back to the estate of the decedent because of the failure of the designated beneficiary, such assets are not included in the probate estate of the decedent. Life insurance proceeds, payable to a designated beneficiary other than the decedent's estate, should pass free from the claims of the decedent's creditors. §§ 6-10-8, 27-14-29.

### 2.4. Exempt Property and Allowances.

? **Homestead.** The surviving spouse of a decedent domiciled in this state is entitled to a homestead allowance of \$6,000.00. § 43-8-110. If there is no surviving spouse, each minor or dependent child of the decedent is entitled to an allowance amounting to \$6,000.00 divided by the number of minor or dependent children. This allowance is exempt from claims against the estate, and is in addition to any share of the decedent's estate passing to the surviving spouse or minor children by the will of the decedent (unless otherwise provided in the will), by intestate succession, or by way of elective share. *Id.*

? **Exempt Property.** In addition to the section 43-8-110 homestead allowance, the surviving spouse of a decedent domiciled in the state is entitled to receive property of a value not exceeding \$3,500.00 in household goods, automobiles, appliances, and personal effects. If there is no surviving spouse, the children of the decedent are entitled to the allowance. § 43-8-111. This allowance is in addition to any benefit or share passing to the surviving spouse or children by the will (unless otherwise provided in the will), by intestate succession, or by way of elective share.

? **Family Allowance.** In addition to the homestead allowance and the right to exempt property, the surviving spouse and the children whom the decedent was supporting, or obligated to support, are entitled to a reasonable maintenance allowance for up to one year while the estate is in administration. The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children. The family allowance is exempt from all claims but does not have priority over the homestead allowance. The family allowance may not exceed \$6,000 for the year. §§ 43-8-112, 43-8-113.

### 2.5. Wages Owed an Intestate Employee.

When an employee dies intestate and the decedent is owed wages or salary, the employer may pay such wages to the surviving spouse of the decedent or, if there is no surviving spouse, to the guardian of the decedent's minor children. § 43-8-115. Such sums are to be considered as a part of the exempt property, as defined in section 43-8-111, and if the sum exceeds \$3,500, the excess shall be considered part of the family allowance under section 43-8-112.

### **3. THE PROBATE PROCESS.**

#### **3.1. Probate in General.**

The primary job in administering an estate is to identify assets, collect assets, preserve assets, identify heirs and/or devisees, identify creditors, pay claims and administrative costs, and distribute the balance to the heirs and/or devisees. The method for accomplishing the foregoing is by "opening an estate" in the county probate court. The term "opening an estate" generally refers to filing the appropriate documents in the probate court and receiving either Letters of Administration or Letters Testamentary (generally, "Letters"). The Letters serve to grant the person who receives them the authority to administer the estate. The person granted the Letters in a testate estate is the "executor/executrix" or in the case of an intestate estate, the "administrator." It is also appropriate to refer to the executor or administrator as the "personal representative." An administrator, operating under Letters of Administration, is limited by statute with respect to certain acts which cannot be done without a court order. An executor, acting under Letters Testamentary, is governed by the terms of the will and by statute with respect to certain acts which may be performed without a court order. § 43-2-843. A will may authorize the executor to perform any act without court order. § 43-2-844. However, absent such broad authorization, certain acts require court approval. § 43-2-844. Personal representatives are entitled to reasonable compensation. § 43-2-848.

Once it is determined that it is necessary or desirable to open an estate, the process is begun by filing the appropriate documents. The documentation required depends upon whether a will is being offered for the issuance of Letters Testamentary or whether a request is being made for issuance of Letters of Administration in an intestacy situation.

Once Letters have been obtained, the personal representative is required to give actual notice to known or reasonably ascertainable creditors and give publication notice to all others within 30 days from the grant of letters. §§ 43-2-60 and 43-2-61. The issuance of Letters Testamentary or Letters of Administration begins the statutory 6 month period in which claims may be filed against the estate. § 43-2-350.

#### **3.2. Testate Decedents.**

Obtaining Letters Testamentary is a two-step process initiated by offering the will for probate. Once the will is admitted to probate, Letters Testamentary can be requested from the probate court.

Offering the will to probate consists of filing a petition for Probate of Will and filing the original last will and testament. "Upon the death of [the] testator, any executor, devisee, or legatee named in the will, or person interested in the estate, or who has custody of such will, may have the will proved before the proper probate court." § 43-8-160. Wills must be proved in the proper

probate court in accordance with section 43-8-162, discussed above. Notice that the will has been offered for probate must be given. Generally, the persons entitled to notice are those who would benefit if the will were not admitted to probate, i.e., the surviving spouse and next of kin. Sections 43-8-164 through 166 describe the persons to be notified and the procedure. If possible, signed waivers of notice from all concerned should be obtained to expedite admission of the will to probate and thus reduce costs. If waivers are not obtained from all concerned, then the court must conduct a hearing to prove the will. §§ 43-8-167 through 170. The determination that the document is the "Last Will and Testament" of the decedent is "admitting" the will to probate.

After the will has been admitted to probate, the person named in the will as executor may file a petition for Letters Testamentary. Upon this filing, satisfaction of any bond requirement, and payment of court costs incurred in the probate of the will, the probate court will issue Letters Testamentary.

The testator may waive the requirement that the personal representative furnish bond so that bond will not be required unless it has been shown to the court that a bond would otherwise be necessary. If the bond requirement is not waived, the probate court must require the personal representative to furnish bond. § 43-2-851.

If those entitled to serve as executor do not apply for Letters Testamentary within 30 days after the admission of the will to probate or if all named persons do not have the capacity to serve, then the probate court will issue Letters of Administration Cum Testamento Annexo (with will annexed) to those devisees who are eligible to serve and timely file. § 43-2-22. If such persons fail to apply, then those persons otherwise entitled to Letters of Administration may file. § 43-2-27.

### **3.3. Intestate Decedents.**

Section 43-2-42 lists those persons eligible to be issued Letters of Administration and their priority. Those persons entitled to receive Letters of Administration may renounce their right to serve by filing a renunciation. § 43-2-43. In no case will Letters of Administration be granted until after the expiration of five days from the date of the intestate decedent's death. § 43-2-45.

To obtain Letters of Administration, the appropriate person entitled to receive them must file a Petition for Letters of Administration in the proper probate court. § 43-2-40. To facilitate matters, any renunciations should be filed along with the petition. There are no notice requirements for issuance of Letters of Administration. Therefore, it is not necessary to obtain and file waivers of notice from the heirs and next of kin.

### **3.4. Administration of Small Estates.**

The Alabama Small Estates Act, sections 43-2-690 through 696, establishes a procedure whereby the probate judge may be petitioned to make a summary distribution of the decedent's estate. Although this may be a useful and money-saving procedure, its application will be extremely limited since the eligible estate must not contain any real property nor may it be valued in excess

of \$3,000. § 43-2-692. A practitioner might consider other alternatives to the small estate administration (such as allowances, operation of law, bank payment to the surviving spouse, etc.)

#### **4. RECORD KEEPING.**

##### **4.1. Statutory Requirements.**

Generally, statutory requirements for record keeping apply to both testate and intestate estates alike. However, a statute may provide a means for relieving an executor from its requirements. For example, through means of an express testamentary provision, a testator may relieve his executor from filing an inventory. §§ 43-2-311 and 43-2-835. Nevertheless, the statute provides a protection clause for the estate in that the court may still order an inventory if in its opinion the estate is likely to be wasted. *Id.* Statutory record-keeping requirements include:

- ? **Inventory.** The administrator, and executor if applicable, must take possession of the goods, chattels, money, books, papers, and records of debt of the decedent and make a full inventory. § 43-2-835. The inventory must be made under oath, § 43-2-313, and must itemize the debts and assets in detail, § 43-2-312. It must be filed within two months after the grant of Letters, § 43-2-835, and it must be supplemented to include assets not listed in earlier inventories, § 43-2-836.
  
- ? **Condition of affairs.** After the lapse of six months from the date of issuance of letters, any person interested in the estate, or the court itself, may require the filing of an exhibit showing the amount of claims, names of claimants, and other matters reflecting the condition of affairs of the estate. § 43-2-318.
  
- ? **Sale of personal property.** Personal property can be sold by the executor (without provision to do so in the will) or administrator only to pay debts, for distribution purposes, or to prevent waste of property. § 43-2-410. This is accomplished by a petition for the sale of personal property. Notice is required in all cases except when the property sold is perishable. § 43-2-411. Once the petition is granted, terms of the sale are advertised in a newspaper in the county in which the sale is to take place. § 43-2-413. A report of sale must be filed within 30 days after the sale. § 43-2-422.
  
- ? **Sale of real property.** Real property can be sold by the executor (without provision to do so in the will) or administrator for the purpose of paying debts when the personalty is insufficient, §§ 43-2-441, 43-2-442, 43-2-844, or where it cannot otherwise be equitably divided, § 43-2-443. A petition for sale of realty is filed with the court and a hearing held. Notice is required to be given and a waiver of notice can be obtained from those persons with the capacity to waive notice. The procedure may be expedited by obtaining a consent to sale of real estate from all interested persons and thereby eliminate the necessity of a hearing. A report of sale must be filed within 30 days after closing the sale. § 43-2-459.



? **Rental of real property.** The personal representative may rent the lands of the estate with the rent becoming an asset of the estate. § 43-2-440.

? **Annual settlement.** Every executor (unless exempted by the will) and administrator must make an annual settlement of their administration and a partial settlement may be required at any time when necessary for the interests of the estate. § 43-2-500.

#### **4.2. Tax Requirements.**

On the date of death, the estate becomes a new taxable entity and an application for a taxpayer identification number (Internal Revenue Service Form SS-4) must be filed. All income earned by estate assets is reported by the estate. Accounts should be kept in a manner to make the allocation of income as easy as possible.

If an estate tax return (Internal Revenue Service Form 706) is required, files should be maintained based upon each asset and liability category described in the estate tax return. Generally, an estate tax return is required if the gross estate for federal estate tax purposes exceeds the unified credit equivalent, which for the year 2000 is \$675,000.

#### **4.3. Practical Considerations.**

The attorney should counsel the personal representative in the proper manner of keeping accounts. Accounts and records of each asset and liability should be kept in a manner which will expedite the process of filing a final settlement of the estate. This is an area where extra effort by the attorney may be helpful with unsophisticated personal representatives.

The personal representative should open a bank account for the estate and deposit all estate funds into the account. All estate transactions should be made through the estate account to provide a record to be used in making the final settlement of the estate. Cancelled checks will evidence payments made by the estate. The account should be interest bearing or otherwise invested.

Since the personal representative is required to give actual notice to known or reasonably ascertainable creditors, § 43-2-60, the personal representative should maintain a file of all correspondence with estate creditors with a record of the date notice was given.

### **5. CLOSING AND DISTRIBUTION.**

Once assets are identified, collected and liquidated, heirs and/or devisees identified, and the period during which claims may be filed against the estate under section 43-2-350 has passed, the estate administration may be closed. § 43-2-501. However, if an estate tax return was required to be filed, the estate should be kept open until the IRS releases the personal representative from personal liability. The estate is closed by means of a final settlement. There are three statutory methods for finally settling an estate.

#### **5.1. Final Settlement.**

A Petition for Final Settlement may be filed in which the personal representative lists all receipts and disbursements. The disbursements must be supported by written evidence of payment (e.g., cancelled checks) or an affidavit as to credits. The probate court will set a hearing date and interested persons are to be given notice. Those persons capable of waiving notice may sign a Waiver of Notice which should be filed with the Petition for Final Settlement. § 43-2-502. A Waiver of Notice should also be obtained from the bonding company if applicable. The court will appoint a guardian ad litem to represent the interests of minors, unborns and persons of unsound mind interested in the settlement. § 43-2-504. This settlement procedure will produce a court order specifying how the estate is to be distributed. Upon compliance with the order and submission of such compliance to the court, the personal representative (and bonding company if applicable) will be discharged from liability.

### **5.2. Consent Settlement.**

A Petition for Consent Settlement may be filed if all heirs and next of kin entitled to an interest and/or devisees under the will are adults, capable of signing a valid Consent to Settlement, and if all claims against the estate have been satisfied. A Consent to Settlement from each beneficiary is filed with the Petition for Consent Settlement and with a Waiver of Notice from the bonding company (if applicable). § 43-2-506. This is done without submitting a formal accounting to the court and eliminates the necessity of a hearing. *Id.* However, it should be expected that the heirs and next of kin entitled to inherit and/or the devisees under a will would want accounting information before they would give their Consents to Settlement.

### **5.3. Statutory Presumptive Closing.**

An estate will be presumed to be closed by statute when records show that Letters have been issued for more than 20 years and 6 months and no further action has been taken or 20 years have lapsed from the date of any action in the estate, and if all bequests and legacies provided for in the will being administered have been payable or demandable for more than 20 years and the personal representative has not made any payment of any claim or bequest, devise or distributive share, or promised to pay such items for 20 years or more. § 43-2-660. This presumption also means that all debts of the estate, all legacies and bequests, and all distributive shares in the estate are presumed to have been paid to the proper persons. *Id.*

**TESTATE ADMINISTRATION TIME LINE\***

Date of Death (DoD)	Shortly after DoD	6 Months after Letters Issued	9 Months after DoD
	Petition and grant of Letters Testamentary. Actual notice to known creditors. Publication of notice.	Claims period runs. Distributions to beneficiaries may be begun if risks taken into consideration.	Federal estate tax return (Form 706) due, if required.
April 15 <sup>th</sup> following calendar year in which DoD occurred	Within 12 Months after DoD	12 to 24 Months after DoD	6 Months to 3 Years after Letters Issued
Decedent's final income tax return (Form 1040) due.	First fiduciary income tax return (Form 1041) due.	IRS generally releases or audits Form 706.	Estate may be settled

\*The will usually exempts the executor from filing bond, inventory, and accounting. Consequently, those statutory requirements which may be waived by the testator are not shown here.

**INTESTATE ADMINISTRATION TIME LINE**

Date of Death (DoD)	At least 5 days after DoD	2 Months after Letters Issued	6 Months after Letters Issued	9 Months after DoD
	Petition and grant of Letters of Administration. Post bond. Actual notice to known creditors. Publication of notice.	File inventory.	Claims period runs. Distribution to heirs may be begun if risks taken into consideration.	Federal estate tax return (Form 706) due, if required.
April 15th following calendar year which DoD occurred	Within 12 Months after DoD	12 Months after Letters Issued (and annually thereafter)	12 to 24 Months after DoD	6 Months to 3 Years after Letters Issued
Decedent's final income tax return (Form 1040) due.	First fiduciary income tax return (Form 1041) due.	Accounting or consents must be filed.	IRS generally releases or audits 706.	Estate may be settled.

## ESTATE ADMINISTRATION CHECKLIST

Decedent: \_\_\_\_\_ Date of Death: \_\_\_\_\_

Personal  
Representative: \_\_\_\_\_

- \_\_\_\_\_ 1. Conduct initial consultation with client.
- \_\_\_\_\_ 2. Execute engagement agreement.
- \_\_\_\_\_ 3. Give copy of engagement agreement to client and place a copy in file.
- \_\_\_\_\_ 4. Consult with family/client. Obtain: complete family information, capacity of next-of-kin, current spouse information, and prior marriage information.
- \_\_\_\_\_ 5. Estimate size of gross estate, including automobiles, securities, cash, and real estate. \$\_\_\_\_\_.\_\_\_\_\_.
- \_\_\_\_\_ 6. Obtain necessary copies of will. § 43-8-270
- \_\_\_\_\_ 7. Review will.
- \_\_\_\_\_ 8. Petition for probate of will. §§ 43-8-160 through 175, 43-8-130 through 132
- \_\_\_\_\_ 9. Petition for Letters Testamentary, §§ 43-2-190, 43-2-22, 43-2-851, 43-2-852, 43-2-60, 43-2-61 **OR**
- \_\_\_\_\_ 10. Petition for Letters of Administration. §§ 43-2-40, 43-2-42, 43-2-60, 43-2-61, 43-2-22, 43-2-27
- \_\_\_\_\_ 11. Post bond (unless waived). §§ 43-2-851, 43-2-852
- \_\_\_\_\_ 12. Bond renewal date in suspense file.
- \_\_\_\_\_ 13. Arrange for immediate cash requirements of family. § 43-8-112
- \_\_\_\_\_ 14. Request family and Postal Service to forward mail to personal representative.
- \_\_\_\_\_ 15. Obtain certified copies of death certificate.
- \_\_\_\_\_ 16. Inventory and/or empty safe deposit box. §§ 43-2-839, 43-2-835 through 837, 43-2-842, 43-2-312, 43-2-311
- \_\_\_\_\_ 17. Take over known bank accounts. Check for liabilities. §§ 43-2-835 through 839
- \_\_\_\_\_ 18. Check for accounts at other banks and savings & loan associations. § 43-2-835
- \_\_\_\_\_ 19. Claim benefits due from Social Security. §§ 43-2-835, 43-2-837, 43-2-843
- \_\_\_\_\_ 20. Claim benefits due from the Veterans Administration. §§ 43-2-835, 43-2-837, 43-2-843

- \_\_\_\_\_ 21. Notify utilities to discontinue service, if appropriate. § 43-2-843
- \_\_\_\_\_ 22. Obtain receipts for property not reduced to possession or property that passed outright by will. §§ 43-2-843, 43-2-844
- \_\_\_\_\_ 23. Determine that personal representative has identified and placed all property under control. §§ 43-2-837, 43-2-838, 43-2-843
- \_\_\_\_\_ 24. File inventory with Probate Court (unless waived). §§ 43-2-311, 43-2-312, 43-2-835, 43-2-836
- \_\_\_\_\_ 25. Identify and notify creditors. §§ 43-2-60, 43-2-61
- \_\_\_\_\_ 26. Publish notice to creditors. §§ 43-2-60, 43-2-61
- \_\_\_\_\_ 27. Obtain and examine personal records, checkbooks, and income and other tax returns for at least 3 years. § 43-2-833
- \_\_\_\_\_ 28. Collect life and accident insurance and benefits. §§ 43-2-837, 43-2-843
- \_\_\_\_\_ 29. Obtain records of insurance payable to beneficiaries other than the estate. § 43-2-837
- \_\_\_\_\_ 30. Prepare suspense file reminder to check claims docket at court house 6 months after letters issued. § 43-2-350
- \_\_\_\_\_ 31. File estate tax notice and obtain final determination of federal and state income tax liability. § 43-2-833
- \_\_\_\_\_ 32. Determine any powers of appointment, transfers, or relinquishments subject to estate tax. § 43-2-833
- \_\_\_\_\_ 33. Determine any property previously taxed for gift tax purposes.
- \_\_\_\_\_ 34. Determine if any trusts were created by the decedent during his life. § 43-2-833
- \_\_\_\_\_ 35. Determine if decedent was the beneficiary of any trusts during his life. § 43-2-833
- \_\_\_\_\_ 36. Determine whether ancillary proceedings are required (real property outside Alabama). §§ 43-2-833, 43-2-843, 43-2-854
- \_\_\_\_\_ 37. File will and necessary documents in other counties in which real property of the estate is located. §§ 43-2-833, 43-2-843, 43-2-854
- \_\_\_\_\_ 38. Determine total cash requirements and how to meet them. §§ 43-2-833, 43-2-843
- \_\_\_\_\_ 39. Notify beneficiaries of their interests. §§ 43-2-833, 43-2-843
- \_\_\_\_\_ 40. Determine federal and state income tax due for decedent's final return and the due date. §§ 43-2-833, 43-2-843
- \_\_\_\_\_ 41. Determine whether estate will report income on calendar or fiscal year. §§ 43-2-833, 43-2-843
- \_\_\_\_\_ 42. Obtain decedent's accountant's name, address, and telephone number.

- \_\_\_\_\_ 43. Engage accountant for the estate. Execute engagement agreement for accountant to prepare and file estate income tax returns.
- \_\_\_\_\_ 44. All matured notes and accounts collected. §§ 43-2-833, 43-2-837, 43-2-843
- \_\_\_\_\_ 45. All claims paid. §§ 43-2-833, 43-2-843, 43-2-844
- \_\_\_\_\_ 46. All bequests paid. §§ 43-2-833, 43-2-843, 43-2-844
- \_\_\_\_\_ 47. Check tax liability: estate tax, federal income tax, state income tax, and other taxes. §§ 43-2-833, 43-2-843
- \_\_\_\_\_ 48. Estate tax closing letter received.
- \_\_\_\_\_ 49. Set up testamentary trusts and make transfers to trustees. §§ 43-2-833, 43-2-843, 43-2-844
- \_\_\_\_\_ 50. Final settlement ordered after reduction to cash, if desired. §§ 43-2-833, 43-2-843, 43-2-844, 43-2-502, 43-2-506
- \_\_\_\_\_ 51. Final settlement with waivers, vouchers filed - set for hearing. §§ 43-2-833, 43-2-502, 43-2-506, 43-2-843, 43-2-844
- \_\_\_\_\_ 52. Final settlement approved.
- \_\_\_\_\_ 53. Personal representative's fee paid. § 43-2-848
- \_\_\_\_\_ 54. Attorney's fee paid. § 43-2-843
- \_\_\_\_\_ 55. Remaining assets distributed and receipts filed. §§ 43-2-833, 43-2-843, 43-2-844, 43-2-502, 43-2-506

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- Benefield, "Opening and Administering the Estate: Initial Considerations," *Small Estates*, 9/25/92, 33 pp. *Discussion of advantages and disadvantages of probate process. Principal source for checklist in this manual.*
- Jones, "The New Probate Procedures Act and Other Recent Developments," *Small Estates*, 9/10/93, 33 pp. *Explanation of new statute effective 1/1/94 and comparison to old statutes.*
- Martin, *Estate Administration: The First Six Months, Administering Estates*, 11/7/91, 51 pp. *Contains checklists, sample forms, and information on property valuation for tax and inventory purposes.*
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- Murray, "Current Developments in Probate Law," *Administering Estates*, 11/7/91, 71 pp. *Emphasis on trends in case law concerning probate.*
- Newman, "Preparation of Form 706, U.S. Estate Tax Return: The Often-Overlooked Basics," *Administering Estates*, 11/7/91, 53 pp. *How to prepare tax returns on estates of over \$600,000.*
- Paluzzi, "Activities by the Lawyer within the First 30 Days of the Client's Death," *Administering Estates*, 11/7/91, 32 pp. *Overview of first steps in probate process with discussion of attorney-client relations and potential conflicts of interest.*
- Rowe, "Post Mortem Planning," *Small Estates*, 9/10/93, 17 pp. *Discussion of techniques in administration to minimize tax liability.*
- Sanders and Schuppert, "Probate Procedures," *Basic Legal Skills, Volume II ("Bridging the Gap")*, 1993. *Principal source for this manual.*
- Shanks, "Administration of Estates of Persons Dying Intestate," *Small Estates*, 9/25/92, 63 pp. *Overview of entire probate process for an intestate estate.*

## **FORMS**

Standard forms for petitions, consents, etc. may be available from local bar associations. The following sample forms are available from the Birmingham Bar Association:<sup>2</sup>

### **Bond**

**Consent to Sale of Real Property for Division and Distribution (Heirs or Devisees)**  
**Consent to Settlement of Decedent's Estate**  
**Consent to Settlement of Decedent's Estate (Fiduciary)**  
**Inventory (Decedent)**  
**Petition for Ancillary Letters Testamentary with Bond**  
**Petition for Ancillary Letters Testamentary without Bond**  
**Petition for Consent Settlement by Administrator or Executor Who Is the Sole Beneficiary Including Consent Thereto**  
**Petition for Consent Settlement of Decedent's Estate**  
**Petition for Elective Share**  
**Petition for Final Settlement of Decedent's Estate**  
**Petition for Letters of Administration**  
**Petition for Letters of Administration for Special Administrator (*Ad Colligendum*)**  
**Petition for Letters of Administration with the Will Attached (*Cum Testamento Annexo*)**  
**Petition for Letters Testamentary with Bond**  
**Petition for Letters Testamentary without Bond**  
**Petition for Omitted Spouse Share**  
**Petition for Partial Settlement of Decedent's Estate**  
**Petition for Private Sale (Decedent)**  
**Petition for Probate of Will (Not Self-Proved Will)**  
**Petition for Probate of Will (Self-Proved Will)**  
**Petition for Probate of Will upon Certified Copies**  
**Petition for Sale of Perishable Property (Decedent)**  
**Petition for Sale of Personal Property to Pay Debts (Decedent)**  
**Petition for Sale of Personal Property for Division and Distribution (Decedent)**  
**Petition for Sale of Real Property for Division and Distribution (Decedent)**  
**Petition for Sale of Real Property to Pay Debts (Decedent)**  
**Petition to Set Aside Family Allowance During Administration (Children)**  
**Petition to Set Aside Family Allowance During Administration (Surviving Spouse)**  
**Petition to Set Aside Homestead Allowance and Exempt Property with No Administration (Children)**  
**Petition to Set Aside Homestead Allowance and Exempt Property During Administration (Surviving Spouse)**  
**Petition to Set Aside Homestead Allowance and Exempt Property During Administration (Children)**  
**Petition to Set Aside Homestead Allowance and Exempt Property with No Administration (Surviving Spouse)**  
**Report of Insolvency (Decedent)**  
**Report of Payment of Whole Purchase Price for Lands Sold on Credit (Executor/Administrator)**  
**Report of Sale of Decedent's Property (Executor/Administrator)**  
**Waiver of Notice (Surety)**  
**Waiver of Notice on Probate of Will**

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<sup>2</sup>These forms were prepared for use in Jefferson County, Alabama, and may not be applicable in other jurisdictions. Further, the Birmingham Bar Association does not warrant the efficacy or validity of these forms.