

# New Probate Register Orientation Webinar Series

## Wills and Estates

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# Wills and Estates

New Probate Register Orientation



## Learning/ Training Objectives

- Small Estates
- Informal and Formal Estates
- Ancillary Proceedings
- Wills for Safekeeping
- Wills with No Estate



## Deceased Estates – Starting Point (1/2)

- Testate:
  - Was the decedent a resident of your county at the time of their death?
  - If the decedent was not a Michigan resident, did they leave property to be administered in your county (e.g. a house)?
- Testate (Will) v Intestate (No Will):
  - Original Will – may be in safe deposit box, safe, last-known attorney, or filed with Probate Court
  - Nominates a personal representative (i.e. executor)
  - Indicates specific bequests



## Deceased Estates – Starting Point (2/2)

- Assets to Transfer:
  - Vehicles - Heir or next of kin can use Certification from Heir to a Vehicle (TR-29) at the Secretary of State.
  - Joint Assets – Generally pass automatically to joint owner
  - Beneficiary – Bank accounts, life insurance, for example – Generally pass automatically to beneficiary
  - Real Estate - If there is real property to be administered, a small estate or full probate estate will generally need to be opened (not the Affidavit of Decedent's Successor)
- Value of estate (assets to transfer):
  - Looking for whether value exceeds the small estate threshold, to determine what process the individual can use to transfer the decedent's property.
  - An updated list of the annual EPIC Cost-of-Living Adjustments for Small Estates (MCL 700.3982) and Affidavits of Decedent's Successor (MCL 700.3983) can be accessed online at:  
[https://www.michigan.gov/documents/treasury/2020\\_Estates\\_and\\_Protected\\_Individuals\\_Code\\_Cost-of-Living\\_Adjustments\\_to\\_Specific\\_Dollar\\_Amounts\\_679796\\_7.pdf](https://www.michigan.gov/documents/treasury/2020_Estates_and_Protected_Individuals_Code_Cost-of-Living_Adjustments_to_Specific_Dollar_Amounts_679796_7.pdf)



## EPIC Cost-of-Living Adjustments

**TABLE A**

EPIC Cost-of-Living Adjustments for Small Estates and Affidavits of Decedent's Successor

Date of Death	Amount
Before January 1, 2001	\$15,000.00
2001	\$16,000.00
2002-2004	\$17,000.00
2005-2006	\$18,000.00
2007-2008	\$19,000.00
2009-2011	\$20,000.00
2012-2013	\$21,000.00
2014-2017	\$22,000.00
2018-2019	\$23,000.00
2020	\$24,000.00



## Affidavit of Decedent's Successor

- **PC 598**
- The affidavit is signed before a notary public. It is not filed with the Probate Court
- The total value of the estate must be under the amount listed in Table A, based on the year in which the decedent died
- Cannot be used until 28 days have passed following the decedent's death
- Cannot specifically reimburse individual who paid the funeral and burial expenses
- Cannot transfer real property with the affidavit (must use Petition and Order for Assignment, or open a full estate)
- Can transfer property pursuant to a Will (the affiant, or person who filled out the form, should attach it to the affidavit)



## Petition and Order for Assignment (1/3)

- **PC 556**
- Commonly referred to as a “small estate”
- Filing fees of:
  - \$25.00 filing fee
  - \$12.00 certified copy
  - Inventory fee (based on value of assets) – at least \$5.00
- The total value of the estate must be under the amount listed in Table A, based on the year in which the decedent died



## Petition and Order for Assignment (2/3)

- Necessary Forms:
  - Petition and Order for Assignment (PC 556)
  - Receipt from the funeral home indicating who paid what and the amount(s) paid. Funeral and burial expenses are those expenses directly connected with a funeral or memorial service and with the burial or cremation of the body
- A description and value must be given for all property within the decedent's estate
- Any liens, encumbrances, or mortgages on real estate can be used to reduce the property's value listed on page 1 the form
  - NOTE: a mortgage or lien cannot be used to bring the estate under the small estate threshold (e.g. decedent leaves a house worth \$100k with a mortgage of \$80k; this would not equal an estate of \$20k for the purpose of qualifying as a small estate)
- This procedure CANNOT be used to transfer property pursuant to a Will



## Petition and Order for Assignment (3/3)

- Priority for payment
  - Pay funeral and burial expenses
    - To funeral home, if not paid
    - To reimburse payers, if paid (pro-rate if value of estate is insufficient to fully reimburse)
  - Balance to:
    - Surviving spouse
    - Heirs



## Formal/Informal Estate Definitions

- Heir – Person entitled to decedent’s property where there is no Will. MCL 700.1104(p)
- Devisee - Person or entity designated in a Will to receive decedent’s property through a devise. MCL 700.1103(m)
- Testate – Individual died, leaving a Will
- Intestate – Individual died without a Will



## Priority for Appointment – With a Will (Testate)

- Priority for appointment as PR is determined in the following order (MCL 700.3203) if there is a Will:
  - The person nominated in a Will or Codicil
  - The decedent's surviving spouse if the spouse is a devisee of the decedent
  - Other devisees of the decedent (all have equal priority)



## Priority for Appointment – Without a Will (Intestate)

- Priority for appointment as PR is determined in the following order (MCL 700.3203) if there is not a Will:
  - The decedent's surviving spouse
  - Other heirs of the decedent (all have equal priority)
  - After 42 days after the decedent's death, the nominee of a creditor if the court finds the nominee suitable.
  - After 63 days after the decedent's death, or if the court determines exigent circumstances exist, the state or county public administrator if any of the following apply:
    - No interested person applied or petitioned for appointment of a PR within 63 days
    - The decedent died with no known heirs, or
    - There is no spouse, heir, or beneficiary under a will who is a United States resident and is entitled to a distributive share in the decedent's estate



## Requesting Appointment Without Priority

- Priority for appointment as PR can be obtained through:
  - Renunciations – If two or more people share priority, those who do not renounce must concur in nominating another PR
    - Note: A person acting as power of attorney cannot renounce on behalf of the principal (See the Reporter’s Comment to MCL 700.3204)
  - Notice of Intent to Request Appointment – The Applicant can send a notice to all those with equal or greater priority, indicating he or she is seeking appointment as PR. If the notice is mailed and there is no competing Petition filed, the Court can automatically appoint the Application after 14 days.
- Priority for appointment in a Formal Estate can be obtained through:
  - A hearing before the Judge

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## Informal Estates (1/4)

- Filing fees of:
  - \$150.00 filing fee
  - \$25.00 electronic filing systems fee
  - \$12.00 certified copy fee
- Necessary Forms
  - Death Certificate (or obituary)
  - The original Last Will & Testament and any Codicils
    - Note: if the applicant only has a photocopy of a Will he or she will have to initiate formal proceedings by filing a petition
  - Application for Informal Probate (PC 558)
  - Testimony to Identify Heirs (PC 565)
  - Register’s Statement (PC 568)
  - Acceptance of Appointment (PC 571)
  - Letters of Authority (PC 572)
- Potentially Required
  - Supplemental Testimony to Identify Heirs (PC 566) – if there is a Will and it devises property to a “non-heir devisee”
  - Renunciation of Appointment (PC 567)
  - Notice of Intent to Request Informal Appointment (PC 557) and Proof of Service (PC 564)
  - Appearance of Parent of Minor (PC 606)

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## Informal Estates (2/4)

- Compare page one of the Application and the Death Certificate to ensure the following:
  - Date of birth matches
  - Date of death matches
  - Last four numbers of social security number matches
  - Residence is in your county (unless exception applies)
  - Check marital status
- Compare page one of the Application and the Testimony (and Supplemental Testimony, if applicable) to make sure all heirs and/or devisees are listed



## Informal Estates (3/4)

- If a Will:
  - Do you have the original?
  - Does the date of the Will match page two of the Application?
  - Are all devisees also heirs? If not, do you have Supplemental Testimony form?
  - Is nominated PR in the Will the applicant?



## Informal Estates (4/4)

- Does the nominated PR have priority for appointment?
  - If not, do you have:
    - Renunciations from others with equal or higher priority?
    - Notice of Intent with Proof of Service on others with equal or higher priority?
- Are the Testimony (and Supplemental Testimony) notarized?
- Do you have a signed Acceptance of Appointment from the proposed PR or co-PRs?
- If the documents are correct, enter the Register's Statement and issue the Letters of Authority



## Formal Estates (1/5)

- Filing fees of:
  - \$150.00 filing fee
  - \$25.00 electronic filing systems fee
  - \$12.00 certified copy fee
- Necessary Forms
  - Death Certificate (or obituary)
  - The original or copy of the Last Will & Testament and any Codicils
  - Petition for Probate (PC 559)
  - Testimony to Identify Heirs (PC 565)
  - Order of Formal Proceedings(PC 569)
  - Acceptance of Appointment (PC 571)
  - Letters of Authority (PC 572)
  - Notice of Hearing (PC 562)
  - Proof of Service (PC 564)
- Potentially Required
  - Supplemental Testimony to Identify Heirs (PC 566) – if there is a Will and it devises property to a "non-heir devisee"
  - Waiver and Consent (PC 561)
  - Appearance of Parent of Minor (PC 606)



## Formal Estates (2/5)

- Compare page one of the Petition and the Death Certificate to ensure the following:
  - Date of birth matches
  - Date of death matches
  - Last four numbers of social security number matches
  - Residence is in your county (unless exception applies)
  - Check marital status
- Compare page one of the Petition and the Testimony (and Supplemental Testimony, if applicable) to make sure all heirs and/or devisees are listed



## Formal Estates (3/5)

- If a Will:
  - Do you have the original?
  - Does the date of the Will match page two of the Application?
  - Are all devisees also heirs? If not, do you have Supplemental Testimony form?
  - Is nominated PR in the Will the applicant?



## Formal Estates (4/5)

- Does the nominated PR have priority for appointment?
  - If not, do you have:
    - Renunciations from others with equal or higher priority?
    - Notice of Intent with Proof of Service on others with equal or higher priority?
- Are the Testimony (and Supplemental Testimony) notarized?
- Do you have a signed Acceptance of Appointment from the proposed PR or co-PRs?

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## Formal Estates (5/5)

- Provide the Petitioner with a hearing date
- The Court will hold a hearing and appoint a PR for the estate
- The Judge will enter the Order of Formal Proceedings and issue the Letters Authority
- May issue Order and Letters if Waivers/Consents from all interested persons

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## Duties of the PR – Unsupervised Administration (DE files)

- **File** Affidavit of Publication
- **File** an Inventory (PC 577), or submit information to calculate the inventory fee, within 91 days of appointment. The inventory must be served on all interested parties.
  - List real property and personal property
  - Absent an appraisal, real property = state equalized value (SEV) x2
  - Indicate the gross and net values of the estate
- **Pay** Inventory Fee within one year of appointment
- **File** Notice of Continued Administration (PC 587) each year on anniversary of appointment
- **File** a Sworn Statement to Close (PC 590), and serve on all interested parties, when the estate is ready to be closed
  - Note: The estate must stay open for a minimum of 5 months
  - The Court issues a Certificate of Completion (PC 592) 28 days after the Sworn Statement is filed

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## Duties of the PR - Supervised Administration (DA files)

- The PR must file the following documents with the Court and serve copies on all interested persons:
  - Notice of Appointment (PC 573) to interested parties within 28 days of appointment
  - Inventory (PC 577)
  - Fee notice pursuant to MCR 5.313
  - Notice to Spouse (PC 581)
  - Affidavit of Publication
  - Notice of Continued Administration (PC 587)
  - Accountings (PC 583 or PC 584) - Must be filed within 56 days after the end of accounting period unless a shorter period is ordered by the court. The accounting period ends on the anniversary date of the issuance of letters of authority.
  - Tax information
  - Any other documents ordered by the Court
- The PR cannot make a distribution of the estate without prior court order (including any partial distributions)
- The estate is closed by filing a Petition for Complete Estate Settlement (PC 593), after which an Order of Complete Estate Settlement (PC 595) is entered

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## Ancillary Proceedings

- A PR appointed in a state other than Michigan can exercise the power of a local PR by filing a Notice with the Court, as long as:
  - The foreign PR was appointed in another state
  - The decedent had property in your county
  - No local administration is pending
  - No application or petition for local administration is pending
- The following must be filed:
  - \$20.00 filing fee (plus \$12.00 for a certified copy)
  - Notice of Foreign Administration Filing (PC 619)
  - Authenticated copy of appointment from other state
  - Authenticated copy of official bond, if applicable
- The Register or Deputy Register may sign under the Acceptance, and provide a certified copy of the Notice, which can be used with the PR's foreign letters to administer decedent's estate here



## Wills for Safekeeping

- \$25.00 filing fee
- Must be a resident of your county to deposit a Will
- The Will should be placed in a sealed envelope, which includes the individual's name, address, identification number (social security number or Michigan driver's license number)
- The Court will issue a receipt to the depositor with a Will number
- Wills must be kept for 100 years after the date of deposit, and placed in a Wills, No Probate Proceedings file for an additional 100 years before being eligible for destruction
- Wills may be retrieved during the depositor's lifetime. Courts typically require a copy of the Will receipt and personal identification. If the depositor is unable to personally retrieve the will, the Authorization to Release Will Held for Safekeeping (PC 548) may be used.



## Wills with No Estate

- Pursuant to MCL 700.2516, upon the death of an individual, his or her Will must be delivered to the Probate Court of that individual's residence with reasonable promptness by the person with custody of the Will
- Many Courts require an obituary or death certificate to accompany the Will
- A person may be liable for damages or held in contempt for failure to forward a copy of a decedent's Will to the Court
- If a decedent's Will is already being held for safekeeping, it can be removed from safekeeping (making it a public document) and placed in a Wills, No Probate Proceedings file
- Wills are kept for 100 years



## Wills and Estates

# Questions?



## Wills and Estates

# Presenters

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