



How to Probate a Will and Obtain Letters Testamentary

INTRODUCTION

The estate administration process consists of three general stages:

- (1) marshaling the decedent's assets;
- (2) paying creditors and addressing tax matters of the decedent's estate; and
- (3) distributing the remaining assets to the beneficiaries of the decedent's estate.

Depending on the complexities and individual circumstances of the decedent's estate, the administration process may be as short as a few months, or may last for many years. This guide is intended to be used as a reference for the very beginning of the process: obtaining letters testamentary ("Letters") for a named personal representative and submitting the decedent's will for probate.

Standard Estate Administration Procedures Key Terms, Explained

An individual who dies with a valid will in North Carolina is considered to have died "testate" and is referred to as the "testator." The estate is considered to be a "testate estate." The person appointed to handle a testate decedent's estate may be referred to as the "personal representative" (the "PR"), or the "executor" or "executrix" if it is the person named in the testator's will.

Understanding the Process

Two of the PR's initial steps in administering a testate estate should be to submit the decedent's will for probate and to obtain Letters.

The Clerk of Superior Court of the county in which the decedent was domiciled at the time of the decedent's death (the "Clerk") acts as the judge of probate. The Clerk has jurisdiction over estate proceedings. This jurisdiction includes the probate of the decedent's will and granting of Letters to the PR for the administration of the estate. *See* N.C. Gen. Stat. § 28A-2, *et seq.*

Are there any exceptions to the standard estate administration procedures?

Certain limited exceptions to comprehensive estate administration may apply (*e.g.*, smaller estates; summary administration). *See* N.C. Gen. Stat. § 28A-25, *et seq.* Administration of estates qualifying under these provisions is beyond the scope of this summary, but should be examined by all advisors to determine if the decedent's estate qualifies.

USEFUL FORMS

A list of judicial forms is available on the website of the North Carolina Court System, including many forms that will be used during the estate administration process. The following forms are referenced in this guide:

- Form AOC-E-300: Affidavit of Subscribing Witnesses for Probate of Will
- Form AOC-E-301: Affidavits for Probate of Will – Witness(es) Not Available
- Form AOC-E-200: Renunciation of Right to Qualify for Letters Testamentary or Letters of Administration
- Form AOC-E-201: Application For Probate and Letters Testamentary
- Form AOC-E-650: Estates Action Cover Sheet
- Form AOC-E-400: Oath/Affirmation
- Form AOC-E-500: Appointment of Resident Process Agent
- Form AOC-E-405: Notice to Beneficiary
- Form AOC-E-402: Order Authorizing Issuance of Letters
- Form AOC-E-403: Letters
- Form AOC-E-304: Certificate of Probate

These and other useful Estate Planning forms can be found here: www.nccourts.org/Forms/FormSearch.asp
Select "Estate" from the category drop-down menu.

STEP-BY-STEP SUMMARY

Step 1: Locate a copy of the decedent's original will.

Step 2: Submit the decedent's will to the Clerk for probate (within 60 days of the decedent's death) and obtain Letters (so that the decedent's chosen PR has the necessary authority to administer the decedent's probate estate).

(a) Acquire necessary information from the PR to complete the application (form AOC-E-201), including a preliminary inventory of the decedent's assets and values to be submitted.

(b) Gather additional items to be submitted along with the application.

Step 3: The PR should review the decedent's assets more thoroughly, notify creditors, marshal assets and address tax matters.

Locating the Decedent's Will

The PR should locate a copy of the original will. A thorough search should be completed before submitting a will to the Clerk to ensure a later will has not been executed by the decedent. If the will is located in a safe deposit box owned by the decedent, the North Carolina General Statutes provide a process for obtaining access to the safe deposit box. *See* N.C. Gen. Stat. § 28A-15-13.

Probating the Decedent's Will

Upon locating the decedent's will, it should be submitted to the Clerk for probate. Probate is the process by which the decedent's will is validated by the Clerk. As discussed in more detail below, this should be done in conjunction with the PR's application for Letters on a form provided via the North Carolina Court System's website. If the will is not probated by the PR within 60 days of the decedent's death, then any devisee named in the will or any other person interested in the estate, such as a creditor, may make such application upon 10 days' notice to the PR. *See* N.C. Gen. Stat. § 28A-2A-2.

This process may vary depending on the manner in which the will was executed. The requirements for a will to be valid in North Carolina can be found Article 1 of Chapter 31 of the North Carolina General Statutes.

Valid Wills

An **attested written will** is one that is signed by the testator and attested by at least two competent witnesses, and otherwise meets the requirements of N.C. Gen. Stat. § 31-3.3. North Carolina also permits holographic wills, which must be written entirely in the handwriting of the testator and meet the requirements of N.C. Gen. Stat. § 31-3.4., and nuncupative wills under circumstances as described in N.C. Gen. Stat. § 31-3.5.

Is the will self-proving?

Attested wills may be self-proving by having the **signatures of the testator and the two witnesses acknowledged by a notary public**. N.C. Gen. Stat. § 31-11.6 provides a form that can be used to create a self-proving will. If the will is self-proving, it may be submitted for probate without witnesses. *See* N.C. Gen. Stat. § 28A-2A-8(a)(4).

If a will is *not* self-proving, it may be probated by testimony of at least two attesting witnesses. *See* N.C. Gen. Stat. § 28A-2A-8(a)(1). Confirm the appropriate procedure with the Clerk, who may wish for the witnesses to personally appear before the Clerk, or may allow for the witnesses to sign an affidavit before a notary public acknowledging that the decedent signed the will in their presence. *See* N.C. Gen. Stat. § 28A-2A-16. Additional proof may be required if less than two witnesses are available for testimony. *See* N.C. Gen. Stat. § 28A-2A-8(a)(2), (3).

If the will is not self-proving and witnesses are available, then Form AOC-E-300, entitled "Affidavit of Subscribing Witnesses for Probate of Will," may be submitted to the Clerk for this purpose. If one or more witnesses is *not* available, then Form AOC-E-301, entitled "Affidavits for Probate of Will – Witness(es) Not Available," should be submitted instead.

Alternative procedures are required for the probate of holographic wills (*See* N.C. Gen. Stat. § 28A-2A-9) or nuncupative wills (*See* N.C. Gen. Stat. § 28A-2A-10).

Obtaining Letters Testamentary

Letters provide the decedent's chosen PR with the authority necessary to administer the decedent's probate estate.

In a testate estate, the chosen PR should be named in the decedent's will. Certain persons are prohibited from serving as PR in North Carolina. *See* N.C. Gen. Stat. § 28A-4-2.

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Is the decedent's chosen PR willing to serve?

If the named PR does not wish to serve, the individual should **renounce** his or her right to do so and **file Form AOC-E-200**, entitled “Renunciation of Right to Qualify for Letters Testamentary or Letters of Administration.” See N.C. Gen. Stat. § 28A-5-1(a).

Once it has been determined that the person named as PR is willing to serve and will otherwise qualify, Letters should be obtained from the Clerk. The exact process and documentation necessary to obtain Letters may vary from county to county. The Clerk’s office should be contacted to determine the exact documentation to be submitted. The following section describes this process.

Applying for Probate and Letters Testamentary

Form AOC-E-201, titled “Application For Probate and Letters Testamentary” (the “Application”), provides in one form for both the probate of the decedent’s will and the application for Letters by the PR. This form **should be completed on behalf of the PR and submitted to the Clerk**.

Required Information to Complete Form

The following information should be obtained from the PR to complete the form:

- Full Legal Name of the Decedent
- Decedent’s Address at time of death
- Place of Death (if different than domicile)
- Persons entitled to share in the decedent’s estate (including full names, ages, relationships to the decedent, and mailing addresses)

If a revocable or *inter vivos* trust is a beneficiary of the estate, confirm the appropriate naming convention with the Clerk. Typically, the trustee’s name should be given, followed by the name and date of the trust agreement.

Page 2 of Form AOC-E-201 requests a **preliminary inventory of the decedent’s assets and values** to be submitted. At this point of the estate administration, the list of assets and values may be no more than an estimate. Instructions for the preliminary inventory are available on the North Carolina Court System form list.

Part I of the Preliminary Inventory requires a listing of the property of the decedent’s estate. Part II requests information regarding non-probate assets that could potentially be used to pay claims of the estate if creditor claims should exceed the value of probate assets listed in Part I. Part III requests additional information regarding property in which the decedent may have an interest.

Additional Requirements

The following items should be submitted with the application:

- The decedent’s **original will and codicils**, if any
- A **certified copy of the death certificate**, if available, or other evidence of death. The Clerk may rely on any of the documentation listed in N.C. Gen. Stat. § 28A-6-1(c) as evidence of death.
- An **Estates Action Cover Sheet**, available as Form AOC-E-650. This cover sheet requires a listing of the persons entitled to share in the decedent’s estate.
- A **small fee** for court costs, which may be due upon qualification. The amount of the fee and timing of the payment should be confirmed with the Clerk. A complete listing of the costs, assessed by statute, can be found at N.C. Gen. Stat. § 7A-307.
- An **Oath/Affirmation** of the PR. See N.C. Gen. Stat. § 28A-7-1. The PR must take an oath or affirmation before a notary public or the Clerk that the person will faithfully and honestly discharge the duties of the person’s office. In a testate estate, the PR must attest to the belief that the paper writing submitted is the valid will of the decedent. The Oath/Affirmation is available as Form AOC-E-400.
- If the PR is not a resident of North Carolina, an appointment of **Resident Process Agent**. Form AOC-E-500, the “Appointment of Resident Process Agent,” may be used to name an agent within North Carolina.
- If the PR has not been excused from doing so under statute, they must **post bond**. See N.C. Gen. Stat. § 28A-8-1. Generally, residents of North Carolina are excused from posting bond unless the will expressly provides otherwise. Nonresidents are required to post bond unless a resident agent has been appointed to accept service of process, when the express terms of a will excuse a nonresident executor from giving bond.
- A **notice to each beneficiary** (Form AOC-E-405) named in the will. See N.C. Gen. Stat. § 28A-2A-3. Generally, these notices will be prepared by the PR and mailed by the Clerk. The process should be confirmed with the Clerk.

NC Estate Administration Manual, Supplemented 8th Edition (2014/2016)

This bestselling, comprehensive procedural guide:

- Reflects updated legislation
- Provides systematic and uniform procedures
- Includes nearly 200 time-saving, fillable/editable forms

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Granting of Letters and Certificate of Probate

Upon receipt of all required documentation and the Clerk's determination that the decedent's will is proven to be valid, the Clerk will issue an "Order Authorizing Issuance of Letters." This order is available as Form AOC-E-402, and may be submitted to the Clerk along with the required documentation. Upon signing and filing the order, the Clerk will issue Letters to the PR. See Form AOC-E-403. As good practice, the PR should obtain several certified copies of the Letters from the Clerk, who typically issues only five (5) with the order. More can be requested thereafter. During the course of administration, the PR may need to provide copies of the Letters as proof of the appointment.

Upon accepting the decedent's will for probate, the Clerk will issue a **Certificate of Probate**. The Certificate of Probate is available as Form AOC-E-304.

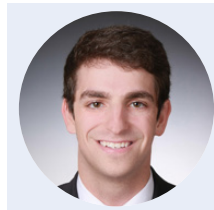
Next Steps

Now that the decedent's will has been accepted for probate, and the Letters have been issued, the PR will begin a more thorough review of the decedent's assets and begin the process of notifying creditors, marshaling assets and addressing tax matters.

Additional Resources

The two resources below provide comprehensive guidance in administering a decedent's estate in North Carolina, and can be useful for all matters associated with the administration process:

- *North Carolina Estate Administration Manual*, published by the North Carolina Bar Association (see additional details on page 3 of this guide); and
- *North Carolina Estate Settlement Practice Guide*, published as part of the North Carolina Practice Series.



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APPLICABLE STATUTES

- N.C. Gen. Stat. § 7A-307 | List of court costs assessed in administration of estates
- N.C. Gen. Stat. § 28A-2, *et seq.* | Jurisdiction of Clerk over estate proceedings
- N.C. Gen. Stat. § 28A-2A-2 | Timeframe for PR to apply for probate of will, after which any other interested person may apply
- N.C. Gen. Stat. § 28A-2A-3 | Requirement that Clerk notify all beneficiaries regarding probate of decedent's will
- N.C. Gen. Stat. § 28A-2A-8(a)(1) | Testimony of two or more attesting witnesses required to probate an attested written will that is not self-proving
- N.C. Gen. Stat. § 28A-2A-8(a)(2), (3) | Additional proof required to probate a will that is not self-proving when less than two witnesses are available for testimony
- N.C. Gen. Stat. § 28A-2A-8(a)(4) | Probate of self-proved attested written will
- N.C. Gen. Stat. § 28A-2A-9 | Required procedures for probate of holographic will
- N.C. Gen. Stat. § 28A-2A-10 | Required procedures for probate of nuncupative will
- N.C. Gen. Stat. § 28A-2A-16 | Witnesses to a will may be examined by affidavit, unless otherwise required at the discretion of the Clerk to appear personally
- N.C. Gen. Stat. § 28A-4-2 | Persons prohibited from serving as PR in North Carolina
- N.C. Gen. Stat. § 28A-5-1(a) | Renunciation by individual named in decedent's will of their right to serve as PR
- N.C. Gen. Stat. § 28A-6-1(c) | List of documentation upon which Clerk may rely as evidence of death
- N.C. Gen. Stat. § 28A-7-1 | Oath/affirmation required of PR before Letters may be issued
- N.C. Gen. Stat. § 28A-8-1 | Requirement that bond be paid before Letters are issued to PR; list of persons excused from paying bond
- N.C. Gen. Stat. § 28A-15-13 | Process for obtaining access to safe deposit box containing decedent's will
- N.C. Gen. Stat. § 28A-25, *et seq.* | Exceptions to comprehensive estate administration
- N.C. Gen. Stat. § 31-3.3 | Description of/requirements for attested written will
- N.C. Gen. Stat. § 31-3.4 | Description of holographic will
- N.C. Gen. Stat. § 31-3.5 | Description of nuncupative will
- N.C. Gen. Stat. § 31-11.6 | Form to create a self-proving will