

Probate: Delaware

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A Question and Answer guide that outlines the laws and procedures governing probate and estate administration in Delaware. This Q&A addresses the various types of estate proceedings, including formal administration, small estate administration for estates valued under a certain threshold, and ancillary administration for non-residents with assets in Delaware. It discusses the process for opening an estate with the Register of Wills, appointing a personal representative, and the fiduciary duties owed to beneficiaries. The guide covers key administrative tasks, such as filing the estate inventory, navigating requirements for notifying and paying creditors, and preparing necessary accountings. Furthermore, this Q&A guide explains the procedures for closing an estate and discharging the personal representative from liability, referencing key authorities like Title 12 of the Delaware Code and the Delaware Court of Chancery Rules.

Answers to questions can be compared across a number of jurisdictions (see Probate: State Q&A Tool).

Key Statutes and Rules

1. What are the state laws and rules that govern estate proceedings?

In Delaware, the laws governing the administration of decedents' estates are found in:

- Title 12 of the Delaware Code, including chapters on the validity of wills, intestacy and succession, and also the administration of estates, which is specifically covered by Chapters 13 to 31 of Title 12 of the Delaware Code (12 Del. C. §§ 1301 to 3125).
- The applicable rules of the Delaware Court of Chancery (Del. Ch. Ct. R. 187 to 207).

The Registers of Wills in each of Delaware's three counties ([New Castle](#), [Kent](#), and [Sussex](#)) also prescribe their own sets of rules and procedures. Delaware statute authorizes the Registers of Wills for each county in Delaware to establish rules, forms,

and procedures and adjudicate matters where no statute or court rule is otherwise established (12 Del. C. § 2502). Attorneys should ensure they are abiding by the applicable rules and procedures of the county in which the estate proceedings occur. Counsel generally should use the forms provided by the various Registers of Wills.

2. What court has jurisdiction over estate proceedings in your state?

In Delaware, each county has a Register of Wills that serves as a clerk of the Court of Chancery for that county (12 Del. C. § 2501). Certain Delaware statutes, rules, and guidance may refer to a Register of Wills or clerk of court. However, this resource refers only to a Register of Wills throughout. Each county's Register of Wills has jurisdiction over estate proceedings filed in that county. Appeals from decisions of the Register of Wills are heard in the Court of Chancery. (DE CONST. art. IV, §§ 31, 32.)

Types of Estate Proceedings

3. What are the different types of probate or other estate proceedings or processes for transferring a decedent's assets at death?

In Delaware, the three main types of estate administration are:

- **Formal administration.** Formal estate administration generally is required for any decedent who was a Delaware resident at death and with a probate estate that either:
 - is valued in excess of \$30,000; or
 - includes real estate in Delaware, held either solely in the decedent's name or as a tenant in common with the decedent and one or more co-tenants (see Question 4: Real Property in the Delaware Estate).
- **Small estate administration.** A small estate administration is available for a decedent who was a Delaware resident at death and with a probate estate that both:
 - does not exceed \$30,000 in value; and
 - does not include any solely-owned interest in real estate in Delaware (including any portion of real estate owned solely as tenants in common).

In a small estate administration an affidavit attesting that the above and certain other requirements of the statute are met may be submitted to the Register of Wills granting authority to administer the decedent's property without letters (instead of by a petition for formal administration requesting letters). The Register of Wills issues a Small Estate Affidavit which authorizes an individual to transfer the decedent's assets on request or a Small Estate Affidavit may be prepared by an attorney and executed by the person entitled to serve as the personal representative and presented as the authority to transfer the decedent's assets. (12 Del. C. § 2306; see Question 19: Small Estate Administration Using a Small Estate Affidavit.)

- **Ancillary administration.** An ancillary administration generally is the proceeding if a nonresident of Delaware dies leaving real estate or personal property in Delaware that does not pass by title or operation of law. Ancillary proceedings

can be used whether a decedent dies testate or intestate. (12 Del. C. §§ 1307, 1504(b), 1505(a); see Question 19: Ancillary Administration.)

Opening the Estate

4. What is the typical initial filing process for opening an estate? Specifically, please discuss:

- How original wills are handled.
- Whether filing typically occurs by mail, e-filing, or in person and common practices for the most common methods.
- Documents typically submitted to the court with the initial filing.
- Any additional practical advice regarding the initial process for opening an estate.

Original Wills

If a Delaware decedent died with a will, Delaware requires the person possessing the original will to deposit it, including any codicils or relevant separate writings, with the Register of Wills for the county in which the decedent resided at death within ten days after learning of the decedent's death (12 Del. C. § 1301(a)).

If the decedent was not domiciled in Delaware, the testamentary documents (the original will, codicils, and relevant separate writings or verified copies of the record admitting them to probate in a court in the decedent's domicile) must be recorded with the Register of Wills in any county where the decedent's property is located (12 Del. C. § 1307(c)).

Under Delaware Court of Chancery rules, no petition to act as personal representative in a testate estate (for letters testamentary or letters of administration with will annexed) may be filed with the Register of Wills until the will is proved (Del. Ch. Ct. R. 189; see Documents Submitted with Initial Filing). However, this is not the practice given Delaware's mandatory e-filing for attorneys (see E-Filing). Though the Delaware Court of Chancery rules do not provide for this, the typical process for depositing the will is for counsel to e-file the initial pleadings with a copy of the will and death certificate and to simultaneously

deliver originals of the will and death certificate to the Register of Wills.

Wills are regularly filed past the ten-day deadline without consequence in Delaware. However, withholding of an original will can result in a penalty of contempt of court (12 Del. C. § 1301(b)).

If the original will is in a safe deposit box and unable to be accessed, there is a statutory procedure for limited access to a safe deposit box for the limited purpose of retrieving a decedent's last will or declaration before the appointment of a personal representative (12 Del. C. § 1313).

E-Filing

Electronic filing is required by all attorneys for probate proceedings in Delaware (see [Delaware Courts, Judicial Branch: Electronic Filing in the Delaware Judiciary](#)). Originals of documents that are filed electronically generally are not required. However, in addition to e-filing the will and death certificate, the original will and an original certified copy of the death certificate must be delivered to the Register of Wills.

Documents Submitted with Initial Filing

The initial filing to open an estate proceeding in Delaware includes:

- Certain filing requirements and forms set by the Register of Wills for the applicable county in Delaware (see, for example, [New Castle County: Probate & Non-Probate Forms](#), [Kent County: Register of Wills Forms](#), and [Sussex County: Register of Wills Forms](#)).
- The original will, any codicils, and any separate writing disposing of tangible personal property, if not already deposited with the county Register of Wills. The originals are submitted to the Register of Wills and copies are e-filed with all the documents listed below. (See Original Wills.) Where a will contains a properly executed self-proving affidavit, the Register routinely deems it approved. Without a self-proving affidavit, proof of a will may be taken without notice to interested persons, unless the interested person requests it by petition filed with the Court of Chancery. On receiving this petition, the court appoints a time for taking the proof and issues subpoena, requiring any person to be present at the taking of the proof. (12 Del. C. § 1303.)

Where the decedent died with a will, a Trust Inquiry Form must be filed with accompanying opening documents.

- A certified copy of decedent's death certificate to the Register of Wills, with a copy e-filed with the documents listed below. In Delaware, death certificates are commonly provided to the personal representative or a family member by the director of the funeral home where funeral services were held. Individuals may apply to [Delaware Health and Social Services, Office of Vital Statistics](#) to receive certified copies of a decedent's death certificate. (16 Del. C. § 3123.) Applications must explain how the document will be used and demonstrate the applicant's relationship to the decedent.
- A Rule 190 petition which, if granted, relieves a personal representative of the requirement to appear at the Register of Will's office when the Register grants letters, or when filing an estate accounting. The Register may grant this petition on a showing that the personal representative is represented in the probate proceedings by an attorney admitted to practice before the Delaware Supreme Court or the personal representative is serving as a co-fiduciary with a personal representative appearing (or represented in the probate proceedings by an attorney admitted to practice before the Delaware Supreme Court). *Pro se* applicants do not need to file this petition. (Del. Ch. Ct. R. 190; see Question 15.)
- A petition for authority to act as personal representative (to receive letters testamentary in a testate estate, in which case the personal representative is generally known as an executor or letters of administration in an intestate estate or where the decedent died with a valid will but no original will can be located, in which case the personal representative is generally known as an administrator) (see Question 5: Petition for Authority to Act as Personal Representative). Although Court of Chancery Rule 189 states that no petition for letters can be filed until the will is proved, it is common practice for these documents to be filed together.
- Renunciations of any individuals eligible to serve as personal representative not wanting to serve (12 Del. C. § 1502(b)).
- A power of attorney in favor of the Register of Wills, if the petitioner is not domiciled in Delaware (12 Del. C. § 1506; see Question 7: Non-Delaware Residents and Entities Incorporated Outside of Delaware).

- A probate case information worksheet, which provides contact information for the personal representative, the personal representative's counsel, if any, and an estimate of the probate fees.

Court Forms

Delaware Registers of Wills and courts may provide forms for filings in the various estate proceedings. Using these forms may be mandatory when the court provides them (see for example, [New Castle County: Probate & Non-Probate Forms](#), [Kent County: Register of Wills Forms](#), and [Sussex County: Register of Wills Forms](#)).

Contacting the Court

Counsel may want to call the Register of Wills to check on the estate file or to ask specific questions before filing the opening pleadings. Whether this is helpful or not varies from county to county.

5. Who can petition to open an estate and what information is required for the petition?

Standing to Petition to Open Estate

The person seeking appointment as personal representative generally files the petition and related documentation (see Question 4: Documents Submitted with Initial Filing). The court does not grant letters testamentary or letters of administration to a minor, a person who is mentally incapacitated, or to a person convicted of a crime (12 Del. C. § 1508). Otherwise, Delaware statutes do not provide any limitations on which persons have standing to file a petition for authority to serve as personal representative.

Delaware statute provides the order of priority to serve as personal representative. When the petition for authority to act as personal representative and related documents is filed:

- If the decedent died with a will, the court must grant letters testamentary to the personal representative (the executor) named in the decedent's will admitted to probate in the county where the decedent was domiciled at death (12 Del. C. § 1502(a)).
- If the decedent died without a valid will or the person or persons named in the valid will are not

able or willing to serve as personal representative, Delaware statute provides for the priority of the persons entitled to letters (12 Del. C. § 1505) (see Question 7).

Certain interested parties may object and can petition to remove a personal representative, in certain circumstances (see Question 6: Standing to Object).

Statutes of Limitation

In Delaware, there is no statute of limitations to admit a will to probate or open an intestate estate administration. However, Delaware has a special public policy favoring prompt settlement of estates (*Criscoe v. Derooy*, 384 A.2d 627, 629 (Del. Ch. 1978)). Therefore, Delaware estates should be opened as soon as is practicable.

The distribution of an estate as intestate property does not prevent the probate of a will discovered later as a basis for establishing the rights of the legatees against those receiving distributions from the estate. In these cases, the court's review of the facts determine whether the parties should be barred by laches (an unreasonable delay) as a result of the late discovery of the will and whether the intervening rights of others are to be effected. (See *In re Est. of Kimmey*, 1979 WL 178107 (Del. Ch. 1979).)

Petition for Authority to Act as Personal Representative

The court process for opening an estate administration in Delaware begins with filing a petition for authority to act as personal representative seeking letters testamentary (when the decedent died with a will) or letters of administration (when the decedent died without a will or in certain cases where only a copy of a will can be located). The petition is filed with the Register of Wills of the county in which the decedent was domiciled or, for a nondomiciliary decedent, the county in which the decedent owned real or personal property (12 Del. C. § 1502(a)).

The petition for authority to act as personal representative is similar when seeking to administer both testate and intestate estates. To prepare the petition, the petitioner needs access to certain information and the decedent's will, if one exists, and must also file certain additional documents with the petition (see Question 4: Documents Submitted with Initial Filing).

Form petitions are available on the websites of the Register of Wills for the three Delaware counties, [New Castle](#), [Sussex](#), and [Kent](#). Use of these forms is not required statute or rule of court, but is encouraged. While the forms for each county's Register of Wills are unique, they generally must include:

- The decedent's name and last known address at death.
- The decedent's date of death.
- The state and county of the decedent's domicile (the decedent's residence at death).
- The petitioner's name and qualification to act as personal representative (12 Del. C. §§ 1502 and 1505; see Question 7)
- The name and address of the decedent's next of kin.
- The approximate value and nature of the probate assets.

For information on commencing a process for small estate administration or ancillary administration, see Question 19.

6. Who does the petitioner have to provide notice to during the estate opening process? Specifically, please discuss:

- Who is entitled to receive notice?
- What notice is required when an estate is open?
- Who has standing to object to the petition for probate or administration?

Notice of Filing of Petition for Authority to Act as Personal Representative

Unlike many other states, Delaware statute does not generally require an individual named in the will or other person with statutory authority to serve as personal representative to provide notice when filing a petition for authority to act, unless the court specifically orders the petitioner to provide notice. The person seeking appointment as personal representative usually files the petition.

Notice by publication is mandated only in distinct proceedings expressly identified by statute, including

escheat and presumed death adjudications (12 Del. C. §§ 1223 and 1702).

Though not specified under Delaware law, due process considerations entitle the surviving spouse of an intestate decedent to special consideration before letters can be granted to someone other than the surviving spouse (see *Matthews v. Eldridge*, 424 U.S. 319 at 348-49; see Question 7).

In addition, the court provide notice for proof of will on petition of an interested person (see Question 4: Documents Submitted with Initial Filing).

Notice of Estate Administration

On the court's granting of letters testamentary or letters of administration to the personal representative, Delaware does not require the personal representative to provide notice to:

- Beneficiaries or other interested persons of the opening of the probate estate until the personal representative files an accounting. For more information on the notice of accounting, exceptions to the accounting, and accounting generally, see Question 13: Accounting.
- Creditors. However, the Register of Wills must give statutory notice to creditors. This statutory notice to creditors involves a publication requirement, which effectively provides publication notice to all interested persons. (See Question 13: Notice to Creditors.)

Standing to Object

Any interested person may file objections to the will itself, which may identify the personal representative, as a caveat against the allowance of the will with the Court of Chancery any time either:

- Before the order admitting the will to probate is entered.
- At least within six months of the entry of the will into probate.

(12 Del. C. §§ 1308(a) and 1309(a).) For example, a person with priority to serve who is not under incapacity or otherwise prohibited from serving under the statute has standing to object to the appointment of a personal representative with lesser statutory priority under the statute (see Question 7).

Interested persons not otherwise provided notice are effectively made aware of the personal

representative's appointment through publication by the Register of Wills giving notice of the granting of letters of administration to creditors (12 Del. C. § 2101(a); see Question 13: Notice to Creditors).

For information on notice requirements for small estate administration and ancillary administration, see Question 19.

Appointing an Estate Fiduciary

7. How is the person in charge of the estate (referred to here as the fiduciary) appointed? In particular please consider:

- The procedure for appointing a fiduciary when the decedent died with a will.
- The procedure for appointing a fiduciary when the decedent died without a will.
- The procedure for appointing a fiduciary in urgent or unusual circumstances.
- Any restrictions on a person's eligibility to act as fiduciary, including whether an attorney who prepares a will for a client can act as the fiduciary.

Appointing a Personal Representative Where Decedent Died with a Will

In Delaware, the personal representative generally cannot act on behalf of a decedent's estate before being appointed and issued letters as a personal representative by the Register of Wills (12 Del. C. § 1501).

The petition for authority to act as personal representative is used to request the appointment of a personal representative in Delaware (see the form petitions available from [New Castle](#), [Kent](#), and [Sussex](#) counties). When the petition is filed and the Register of Wills proves the will and admits it to probate (see Question 4: Documents Submitted with Initial Filing), the Register of Wills also appoints the person entitled and qualified to be personal representative and issues letters testamentary (if a will is present) or of administration (if no will is present) authorizing the personal representative to act (12 Del. C. §§ 1502, 1505; see Qualification as Personal Representative). In practice, the Register of Wills provides the personal

representative with "short certificates" reflecting the grant of the letters to the personal representative.

In Delaware, the Register of Wills routinely grants letters testamentary to the personal representative named in the will admitted to probate in the county where the decedent was domiciled at the time of death, if any (12 Del. C. § 1502(a)). If no named executors qualify, the Register of Wills may grant letters as if the decedent died without a will (12 Del. C. § 1502(b)).

Appointing a Personal Representative Where Decedent Died Without a Will

If a decedent dies in Delaware without a valid will, or if a will does not name a personal representative qualified, willing, or able to serve, the Register of Wills, on receiving a petition for authority to act as personal representative, appoints a personal representative (an administrator) to administer the decedent's estate. The persons entitled to letters of administration are determined by the following order of priority:

- The decedent's spouse.
- The decedent's children.
- The decedent's parents.
- The decedent's siblings of the whole blood and half-blood.

(12 Del. C. § 1505(a), (b).)

Alternatively, competent members of a class with priority to serve may agree in writing to nominate a personal representative to serve. Any objecting members of that class may petition the Court of Chancery to grant letters to their preferred nominee. The Register appoints the administrator in its discretion. (12 Del. C. § 1505(c).)

If no individuals entitled to serve qualify for the grant of letters within 60 days of the decedent's date of death, the Register of Wills may grant letters to any person petitioning for a grant of letters, in the Register's discretion (for example, creditor wanting to file a claim against the estate) (12 Del. C. § 1505(d)).

Appointing a Personal Representative in Urgent or Unusual Circumstances

There is no formal or alternate expedited procedure for appointing a fiduciary in urgent or unusual circumstances in Delaware. Representatives for

the Registers of Wills offices are knowledgeable and helpful. In urgent or unusual circumstances, practitioners are encouraged to communicate with the Register of Wills.

Qualification as Personal Representative

Individuals

A personal representative in Delaware must:

- Be at least 18 years old.
- Not be mentally incapacitated.
- Not have been convicted of a crime disqualifying the person from taking an oath (an infamous crime). Courts have treated felonies as infamous crimes for this purpose. However, evaluation of the question is fact specific relating to the ability to serve and the nature of the crime if it involves fraud or dishonesty. (See *In re Est. of Trammel*, 2010 WL 692328, *1 (Del. Ch. Feb. 9, 2010).)
- Willing to take an oath to perform the duties with fidelity (12 Del. C. § 1509).

(12 Del. C. §§ 1508 and 1509.)

Entities

Entities generally may act as personal representatives of decedent's estates in Delaware. Delaware does not have any statutory limitations on the types of entities which may act as personal representative.

Non-Delaware Residents and Entities Incorporated Outside of Delaware

If a petitioner for appointment as personal representative resides outside of Delaware or is any entity incorporated outside of Delaware, the petitioner must appoint the Register of Wills and the Register's successors as the person's or entity's irrevocable power of attorney to accept service of process and file that appointment with the Register. This includes accepting all notices and process issued by any court in Delaware in relation to any suit, matter or cause affecting or pertinent to the estate in which the letters are issued. The Register of Wills then forwards all process served on the Register to the personal representative by certified mail. (12 Del. C. § 1506.)

For information about appointing a personal representative for an ancillary administration, see Question 19.

8. Is a fiduciary bond required, and if so, in what circumstances?

In Delaware, a personal representative is generally not required to post a bond unless either:

- The decedent's will included an express requirement that the personal representative be bonded.
- A demand that the personal representative be bonded is made by:
 - a person with an interest in the estate worth more than \$2,000; or
 - a creditor with a claim against the estate worth more than \$2,000.

(12 Del. C. §§ 1522, 1524.)

The Court of Chancery may dispense with a bond otherwise required by a will on determination that bond is not necessary or desirable (12 Del. C. §§ 1522, 1524).

If a bond is required and the provisions of a court order or the will do not specify an amount, the Register of Wills determines the bond in an amount which is not less than the best estimate of the decedent's personal estate (12 Del. C. § 1523).

For more information on waiver of a bond, see Question 20: Bond Requirements.

9. How are the key estate fiduciaries compensated?

Personal Representatives

In Delaware, personal representatives and attorneys representing them are generally entitled to compensation (called commissions for personal representatives and attorneys' fees for attorneys) in a reasonable amount, even if the will either:

- Does not include any provisions addressing commissions.
- Includes specific commission or fee provisions.

(12 Del. C. § 2305; Del. Ch. Ct. R. 192(a).)

Delaware presumes commissions and attorneys' fees in the personal representative's account are reasonable unless:

- A beneficiary files an exception to the account alleging the commission or fee is unreasonable.

- The court determines the amounts are unreasonably high, even if no exception is filed.

(Del. Ch. Ct. R. 192(d).)

Factors which Delaware courts may consider in determining a reasonable commission or fee include:

- The time spent in administering the estate.
- The risk and responsibility involved.
- The novelty and difficulty of the questions presented.
- The skill and experience of the personal representative and the attorney.
- Any provisions of the will regarding compensation.
- Comparable rates for similar services in the locality.
- The character and value of:
 - the estate assets; and
 - assets which are not part of the probate estate but which must be valued and reported on any federal, state, local, or foreign death tax return.
- The time constraints imposed on the personal representative and the attorney.
- The loss of other business necessitated by acceptance of the administration.
- The benefits obtained for the estate by the administration.

(Del. Ch. Ct. R. 192(b).)

In Delaware, personal representatives commonly earn approximately two to five percent of the value of the estate to administer the estate. An hourly rate of \$20 to \$30 per hour may also be used to calculate a commission.

Multiple Fiduciaries

Where multiple fiduciaries are serving, any commission earned is allocated among the fiduciaries in a reasonable amount, considering the above factors (Del. Ch. Ct. R. 192).

Corporate Fiduciaries

Corporate fiduciaries (personal representatives) typically expect higher compensation than individual personal representatives. Corporate fiduciary compensation is typically set by a commission schedule that is referenced in the will. Corporate

fiduciary fee schedules are sometimes negotiable, depending on the circumstances. However, Delaware generally evaluates these fees similarly to those for individual personal representatives (Del. Ch. Ct. R. 192; see Personal Representatives).

Drafting Attorney as Personal Representative

There is no statute or court rule in Delaware prohibiting a drafting attorney from acting as personal representative for a client's estate. Attorneys acting as personal representatives are entitled to both fees for legal services and compensation as personal representatives. (Del. Ch. Ct. R. 192; see Personal Representatives).

However, Delaware's rules of professional conduct and fiduciary duties apply. Therefore, drafting attorneys should take care when agreeing to serve as personal representative. For example, an attorney also designated as a creditor of the estate must be careful not to place the attorney's own pecuniary interest above its obligations to the estate and the required stewardship of that estate. (DE R RPC Rule 1.7, cmt. 10.)

10. What is the level of care that each estate fiduciary owes to the beneficiaries of the estate?

In Delaware, a fiduciary must act with the care, skill, prudence, and diligence under the circumstances that a prudent person acting in a similar capacity and familiar with the matter would use (12 Del. C. § 3302; see Question 11).

Administering the Estate

11. What are the main duties of the estate fiduciary in administering the estate?

The general duties of the personal representative are to:

- Act efficiently and in the best interests of the estate and the persons interested in the estate, including creditors.
- Settle and distribute the estate according to the will or, if there is no will, according to Delaware law, including the statute of intestate succession.

(See *Theisen v. Hoey*, 30 Del. Ch. 269, 273 (1948); 12 Del. C. § 101(6), 3302(a), and 3303.)

During an estate administration, the personal representative:

- Pays any unpaid funeral expenses.
- Gathers the decedent's assets and transfers them to the name of the estate. At the decedent's death, ownership of estate real property in Delaware generally vests in those entitled to it at that time (see Question 12: Real Property in the Delaware Estate).
- Considers any claims filed by creditors and either pays or objects to those claims.
- Prepares an estate inventory.
- Manages and preserves the estate assets before distribution.
- Pays estate expenses and taxes, if any, arranging for the preparation of the decedent's last lifetime income tax returns and preparation of the estate's fiduciary income tax returns, if required.
- Prepares an accounting with the final distribution or at least annually, if the estate is open longer than a year.
- Distributes estate assets to the appropriate beneficiaries according to the terms of the will or the rules of intestate succession.

The personal representative may perform other acts throughout the administration, depending on the circumstances. For example, the personal representative may sell real property if directed or authorized to do so in the will or by the court (12 Del. C. § 2701). The personal representative should consider the estate's liquidity needs, proper asset management, and any tax consequences from the sale and distribution of estate assets.

For information about the duties of the personal representative in the ancillary administration process, see Question 19: Ancillary Administration.

12. What are the key documents and procedures in your state for ongoing estate administration?

In Delaware, generally:

- The personal representative:
 - files the opening pleadings for an estate proceeding (see Question 4, Question 5, and Question 6);

- notifies creditors of the estate proceeding by arranging for the publication up the filing of the petition with the Register of Wills, and handles any creditor claims (see Question 14);
- files an estate inventory (see Estate Inventory);
- files an estate accounting (see Question 13: Accounting); and
- closes the estate (see Question 15 and Question 16).
- The Register of Wills notifies the applicable county recorder's office regarding the transfer of real property at death, after the filing of the inventory by the personal representative (Real Property in the Delaware Estate).

Real Property in the Delaware Estate

Delaware deems the transfer of a decedent's Delaware real property subject to probate to occur at the decedent's death to either:

- The beneficiary or beneficiaries as stated in the decedent's will, if the decedent died with a valid will.
- The heir or heirs under the Delaware intestacy law, if the decedent did not die with a valid will (see [State Q&A, Wills: Delaware: Question 16](#)).

After the documents required to open a Delaware estate and prove the will (if any) are submitted to the Register of Wills (see Question 4), and letters are granted and the inventory is filed, the Register sends a confirmation of the transfer incorporating the real estate page of the inventory (Real Estate Memo) to the county Recorder of Deeds office for recording on the real property's chain of title. However:

- If the decedent's will contains an affirmative direction to sell the real property (not merely a discretionary or executory power, but rather the specific directive to sell), the real property does not vest in a beneficiary under the will, but remains in the estate for the personal representative to dispose of as mandated by the will.
- If the personal representative determines that the estate's personal property assets are insufficient to pay all the estate's debts (including the decedent's funeral expenses, expenses of administration, and taxes), the personal representative may file a petition with the Court of Chancery ordering the transfer of the real property back to the estate so that it may be sold to pay those debts. For more information on estate debts, see Question 14: Paying and Objecting to Claims.

Estate Inventory

Within three months of the issuance of letters to the personal representative, the personal representative must identify and collect the decedent's probate assets and file an inventory with the Register of Wills in the county where letters were granted (along with a copy in any county where the decedent owned real estate). The inventory must include:

- All the decedent's probate assets and their fair market value as of the decedent's date of death. The personal representative may employ one or more qualified and disinterested appraisers to determine this value if it may be subject to reasonable doubt, in which case the inventory should list the names and addresses of the appraisers with the item or items they appraised (12 Del. C. § 1904).
- A list of debts or credits due or belonging to the decedent.
- Any real property solely owned by the decedent, along with the name, address, relationship, and share of the person or persons inheriting the real property on the owner's death, as well as the tax parcel number of the property.
- Any jointly owned property, including real estate, monies, annuity contracts, or any other asset including non-probate assets, if any.

(12 Del. C. § 1905(a), (c).)

The inventory must also include an affidavit executed by the personal representative, stating:

"[PERSONAL REPRESENTATIVE NAME] makes solemn oath (or affirmation) that due inquiry concerning the goods, chattels and money of, and the debts and credits due or belonging to [DECEDENT NAME], deceased has been made, and that this inventory and list contains all the goods, chattels and money of, and debts or credits due or belonging to the said [DECEDENT NAME], which have come to the knowledge of the deponent (or affirmant) and that the information contained in the statement of real estate and the information pertaining to transfers of property, powers of appointment, entireties and jointly owned real and personal property and annuity contracts is true to the best of deponent's (or affirmant's) knowledge and belief."

(12 Del. C. § 1905(c).)

If the personal representative cannot obtain sufficient asset information and values to prepare and file

an inventory within three months, the personal representative can petition to request to extend the time for filing the inventory. A copy of the petition must be served on the parties entitled to receive notice of the accounting (see Question 6: Notice on Accounting). Each Register of Wills office has a procedure to request the extension with it being either by form or by letter.

If the personal representative discovers additional assets or determines a different fair market value of assets after filing the inventory, the personal representative should file a supplemental or amended inventory (12 Del. C. § 1910).

For information about key procedures in small estate and ancillary estate administration proceedings and in disposition of personal property without administration, see Question 19.

13. What are the due dates for key documents and processes during and after the estate proceeding?

Notice of Petition for Authority to Act as Personal Representative and of Estate Administration

Delaware generally does not require notice of the filing of a petition for authority to act as personal representative or notice of the administration of the estate, when granted (see Question 6).

Notice to Creditors

In Delaware, the Register of Wills gives notice of the granting of letters, which notice contains:

- The date of the grant of letters.
- The date of the decedent's death.
- The name and address of the personal representative and the personal representative's counsel, if any.

(12 Del. C. § 2101(a).)

The Register of Wills must give this notice by both of the following:

- An advertisement posted within 40 days from the grant of letters:
 - on the designated county website or in the county courthouse in the county in which the decedent resided at death, or both; or

– for nonresident decedents, in the county in which the court granted letters testamentary or of administration.

- Publication, by publishing notice in one or more newspapers approved by the Register of Wills at least once a week for three successive weeks within the 40-day period.

(12 Del. C. § 2101(b).) The Register of Wills may waive the advertisement requirement if both:

- The decedent's gross personal estate does not exceed \$30,000.
- The decedent's gross real and personal estate does not in the aggregate exceed \$35,000.

(12 Del. C. § 2101(b).)

The Register of Wills also must send of a copy of the notice to the State Treasurer within 40 days of granting letters (12 Del. C. § 2101(d)).

For additional information on notice to creditors, see Question 14.

Inventory of Assets

The fiduciary must file the inventory of assets with the Register of Wills within three months of the court issuing letters to the personal representative (12 Del. C. § 1905; see Question 12: Estate Inventory). The Register of Wills, under the procedures in each applicable county, may, for sufficient cause, grant an extension for the time to file an inventory (see, for example, [New Castle County Register of Wills Request for Extension Form](#)).

Accounting

Every personal representative must render an account:

- No earlier than eight months following the decedent's date of death (the deadline for creditor claims).
- Within one year of the grant of letters. An extension may be granted, not to exceed 6 months, on a showing of good cause.
- Every year from the date of their letters until the estate is closed and a final account passed by the Court.

(12 Del. C. § 2301(a).)

The Register of Wills may:

- For sufficient cause extend the time for an accounting up to six months.
- Dispense with an account, on the personal representative's affidavit, when it appears to the Register there are no matters for an account in any year.

(12 Del. C. § 2301(c).)

Unless a beneficiary validly waives notice, the Register of Wills must provide written notice of the filing of the account to each beneficiary or the statutory representative, informing them that the accounting is open for inspection and exception for three months from the mailing of the notice (12 Del. C. § 2302; see Question 15).

Notice on Accounting

Every account filed by a personal representative must include a statement of the names and mailing addresses of each beneficiary entitled to share in the estate distribution, including those waiving any notice of the accounting. If the beneficiary is incapacitated, the account must include the name of the beneficiary and the name and mailing address of a guardian or trustee for the beneficiary or, if none, the beneficiary's parent. (12 Del. C. § 2302(a).)

After adjustment and settlement of the accounting by the Register of Wills, the Register mails to those beneficiaries written notice that the personal representative filed the accounting, unless those beneficiaries validly waived notice. The notice must inform the beneficiaries (or their statutory representatives in certain circumstances) that the account is open for inspection and exception for three months from the date of mailing of the notice. (12 Del. C. § 2302; Del. Ch. Ct. R. 194; see Waivers and Consents to Accounting.) This notice must be:

- Given in the name of the personal representative
- Supplied by the personal representative with stamped, addressed, and unsealed envelopes.
- Generally conform with court's form.

(Del. Ch. Ct. R. 194.) The court may require additional notice be published where names and addresses of potential beneficiaries are unknown.

Any beneficiary entitled to share in the distribution of the estate not properly noticed and not waiving the notice may timely take exception (file an objection) to the accounting (12 Del. C. § 2302; see *Cooling v. Sec. Tr. Co.*, 29 Del. Ch. 286, 294-95 (Del. Ch. 1946); *Exceptions to Accounting*).

Waivers and Consents to Accounting

In an estate where the personal representative does not reasonably anticipate disputes, the personal representative typically asks those entitled to notice of accounting to waive the notice and consent to court approval of the accounting. The personal representative must file a copy of any waiver and consent with the Register of Wills. (12 Del. C. § 2302(c); Del. Ch. Ct. R. 194(b).)

Form waivers, provided by the Registers of Wills in [New Castle](#), [Sussex](#), and [Kent](#) counties generally certify that the waiving beneficiary, identified by name and mailing address, is:

- Entitled to share in the distribution of the estate.
- Waiving any rights to receive further notice of the accounting and later accountings.
- Understands that the waiver may not be withdrawn.

For more information on accountings, waivers of accountings, and closing the estate, see Question 15 and Question 16.

Exceptions to Accounting

Any beneficiary entitled to share in the distribution of the estate not properly noticed and not waiving the notice may take exception (file an objection) to the accounting within three months from the date of the notice (12 Del. C. § 2302; see *Notice on Accounting* and Question 15 and Questions 16). If no notice is provided, a court may find that the limitations period has not begun to run (see *Cooling*, 29 Del. Ch. at 294-95).

Federal Estate Tax Return

The due date for filing a federal estate tax return ([Form 706](#)) is nine months after the decedent's death (26 U.S.C. § 6075). A six-month extension ([Form 4768](#)) for filing the return is automatically granted if filed before the due date of the return (26 C.F.R. § 20.6081-1(b)).

If an estate has more than one personal representative, only one personal representative needs to sign the estate tax return. However, all personal representatives are responsible for the information contained on the return (26 C.F.R. § 20.6018-2; see [Instructions for Form 706, Signature and Verification](#)).

For more information on the federal estate tax, see [Practice Note, Federal Estate Tax](#).

Delaware Estate Tax Return

Delaware does not have:

- An estate tax for decedent's dying on or after January 1, 2018 ([81 Del. Law ch. 52 \(2017\)](#)).
- An inheritance tax related to the estates of decedent's dying on or after January 1, 1999 ([71 Del. Laws ch. 353, HB 771](#)).

Estate Income Tax Return

The due date for the estate income tax return ([Form 1041](#)), if necessary, varies depending on whether the estate is operating on a calendar year or a fiscal year. The return is due on:

- April 15th of the year following the calendar year in which the estate received the income for calendar year estates.
- The 15th day of the fourth month following the close of the tax year for fiscal year estates.

An automatic five-month extension is available. (see [Instructions for IRS Form 1041](#).)

Delaware Estate Income Tax Return

The due dates for the Delaware estate income tax return ([Fiduciary Income Tax Return Form 400](#)), if necessary, varies depending on whether the estate is operating on a calendar year or a fiscal year. The return is due on:

- April 30th of the year following the calendar year in which the estate received the income for calendar year estates.
- The last day of the fourth month following the close of the tax year for fiscal year estates.

(See [Delaware Division of Revenue, Delaware Fiduciary Income Tax Return Form 400 Instructions](#).)

Considerations for Creditor Claims

14. What is the procedure for notifying and paying creditors of the estate?

Notifying Creditors

To provide notice to creditors, the Register of Wills must timely give notice of the granting of letters testamentary or letters of administration as follows by both:

- Advertising notice by posting on the designated county website or applicable county courthouse, or both, within forty days of the grant of letters.
- Publishing notice in the county newspaper once a week for three consecutive weeks.

However, if the gross personal estate of the decedent does not exceed \$30,000 and if the gross real and personal estate of the decedent does not exceed \$35,000, the Register of Wills may allow notice to be given by posting advertisements, and not by publication. (12 Del. C. § 2101; see Question 13: Notice to Creditors.)

Delaware does not generally require a personal representative to provide a separate notice to known or reasonably ascertainable creditors in addition to the notice to creditors provided by the Register of Wills, as in many other jurisdictions.

Delaware deems personal representatives to have notice only of mortgages (but not of the bonds accompanying these mortgages) and of judgments that are liens against real estate at the decedent's death that are of record in the Delaware county in which letters were granted on the decedent's estate, unless there was a failure to insert them in the general indices of the proper recording office. This deemed notice may affect the general time period for bringing claims in a decedent's estate in certain circumstances. (12 Del. C. § 2103; see Relevant Time Periods for Creditor Claims.)

Contents of Notice to Creditors

The notice to creditors must contain:

- The date of the grant of letters.
- The decedent's name and date of death.

- The personal representative's name and address.
- The name and address of the personal representative's attorney, if any.

(12 Del. C. § 2101(a).)

Relevant Time Periods for Creditor Claims

Claims arising before or at the decedent's death, if not barred earlier by other statute of limitations, are barred against the decedent's estate, personal representatives, and heirs and devisees unless presented within eight months of the decedent's death whether or not notice of the granting of letters testamentary or letters of administration was given (12 Del. C. § 2102(a)). Delaware presumes notice of mortgage debts and of such judgments as would be liens against real estate at the decedent's death, which were properly recorded. These claims need not be presented to the personal representative or Register of Wills to preserve the claims against the estate. (12 Del. C. § 2103.)

Claims arising after the decedent's death are barred against the decedent's estate, personal representatives, and heirs and devisees, unless presented either:

- Within six months after performance by the personal representative is due, for claims based on a contract with the personal representative.
- Within six months after it arises, for any other claims.

(12 Del. C. § 2102(b).)

Presenting a Claim

A claimant may deliver or mail to the personal representative a written statement of claim. The claimant may also file a written statement of claim with the Register of Wills. The claim is deemed presented on the first to occur of:

- The receipt of the written statement of claim (for example, an invoice) by the personal representative.
- The filing of the claim with the Register of Wills.

(12 Del. C. § 2104(1).) As the claimant may have difficulty proving that the personal representative received notice (for example, receipt of an invoice by the personal representative), the claimant should consider filing the claim with the Register of Wills.

The statement of claim should include:

- The basis of the claim.
- The claimant's name and address.
- The claim amount.
- If a claim is not yet due, the date when it becomes due.
- If the claim is contingent or unliquidated, the nature of the uncertainty.
- If the claim is secured, a description of the security.

(12 Del. C. § 2104(1).)

Failure to correctly describe the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made (12 Del. C. § 2104(1)).

Paying and Objecting to Claims

Once a timely claim is filed, the personal representative can either:

- Accept the claim as valid.
- Object to the claim. An objection to a claim must be presented in a written notice of rejection which must be personally delivered to the claimant or mailed to the claimant's last known address.

Any claim, not otherwise barred, rejected by the personal representative is barred forever unless the claimant starts an action or suit within three months after the personal representative notified the claimant of the rejection in writing. However, for a claim not presently due or that is contingent or unliquidated:

- The personal representative may consent to an extension of the three-month period
- The Court of Chancery, on petition, may order an extension of the three-month period.

Any extension cannot run beyond the applicable statute of limitations. (12 Del. C. § 2102(c); see Relevant Time Periods for Creditor Claims.)

After paying all administration expenses, fees, and commissions, the personal representative must pay claims against the decedent in the following order:

- Surviving spouse's allowance under 12 Del. C. § 2308 (see [State Q&A, Wills: Delaware: Question 8: Disinheriting a Testator's Spouse](#)).
- Funeral expenses.

- Child support arrears or retroactive support due as of the date of the decedent's death.
- The reasonable bills for medicine and medical attendance during the decedent's last sickness and for nursing and necessaries for that last sickness.
- Wages of servants and laborers employed in household affairs or in the cultivation of a farm, up to one year's wages.
- Taxes imposed by Delaware.
- Rent for not exceeding one year which, at the election of the entitled party, may be of rent in arrears or rent growing due.
- Judgments against the decedent, which include judgments before justices of the peace and decrees of a court of equity against the decedent for the payment of money.
- Recognizances, mortgages, and other obligations of record, for the payment of money.
- Obligations and contracts under seal.
- Contracts under hand for the payment of money or delivery of goods, wares, or merchandise.
- Other demands.

(12 Del. C. § 2105(a); see Question 4: Real Property in the Delaware Estate.)

The personal representative may not prefer:

- One claim over any other claim in the same class.
- A claim due and payable over a claim that is not due.

(12 Del. C. § 2105(b).)

If a personal representative is unable to determine the order of preference for the payment of claims made by two or more creditors, the personal representative may petition the Court of Chancery, which determines the order of preference of the creditors' demands (12 Del. C. § 2106).

Closing the Estate

15. What is the process for concluding (or closing) the estate?

In Delaware, except where circumstances justify a longer administration period, a personal representative has one year from the date of letters to render an account of the estate administration.

The account must be rendered each year that the estate is opened. The personal representative is not required to make a distribution of assets during that time period. (12 Del. C. § 2311.)

To close and settle the estate, the personal representative must file a timely accounting, accompanied by a statement of the names and mailing addresses of each beneficiary entitled to share in the distribution of the estate. Unless waived, proper written notice of the filing of the account must be provided to each of these beneficiaries. (12 Del. C. §§ 2301 and 2302.)

On request, the Register of Wills may, for sufficient cause, extend the time for any accounting, with each extension not to exceed six additional months. The Register of Wills may otherwise, after two consecutive years of inactivity, may ask the Court to close the estate or for a rule to show cause against the personal representative why an accounting was not filed. (12 Del. C. § 2301(c), (e); Del. Ch. Ct. R. 194(d); see Contents of Final Account and Question 13: Accounting.)

If a personal representative is:

- Not represented by counsel, after the Register of Wills audits and approves the estate accounting, if no exceptions were filed, the Register contacts the personal representative to schedule an appointment to close the estate. At the closing, the personal representative is administered an oath and must sign an affidavit and present a check or cash for the total closing costs. Closing costs vary depending on the county where the estate is probated. If an exception was filed, the Register of Wills schedules a hearing on the accounting. (12 Del. C. 2302(d); Del. Ch. Ct. R. 197.)
- Represented by counsel admitted to practice before the Supreme Court of Delaware, counsel may file a Rule 190 Petition, if this petition was not previously filed, making a request that the personal representative not be required to appear personally for passing the account (Del. Ch. Ct. R. 190). Form Rule 190 petitions are available on the county websites for the various Registers of Wills (see Question 4: Documents Submitted with Initial Filing). Otherwise or if the court rejects the Rule 190 Petition, the court generally requires a hearing on the account and to close the estate.

Contents of Final Account

The final account generally includes (from the end of the last accounting period, if there was a previous account, or from the opening of the estate, if there was not a previous account):

- All inventoried assets.
- All receipts.
- Debt payments. Administrative costs.
- Gains and losses resulting from the sale of an asset listed on the inventory
- Assets on hand at the close of the accounting period.

With the accounting, the personal representative must also include a list of:

- All beneficiaries of the estate.
- Any waivers executed by those beneficiaries.
- Cancelled checks or receipts evidencing payment of all debts and expenses listed on the accounting.

(Del. Ch. Ct. R. 194; see Question 6: Notice on Accounting and Question 13: Waivers and Consents to Accounting.)

Waiver of Final Account and Portions of Petition for Discharge

To avoid the expense, delay, and potential complication of court oversight, the personal representative often asks the beneficiaries entitled to share in the distribution of the estate to waive the final account and consent to the personal representative's discharge. In this waiver document, the beneficiary waives the right to receive further notice of the filing of the accountings and consents that the accounting may be approved without further notice.

If all the beneficiaries sign these waivers, the personal representative files the waivers with the Register of Wills and the Register can immediately proceed to close the estate (see Question 13: Waivers and Consents to Accounting).

The Register of Wills must mail a notice to those beneficiaries who do not sign waivers that:

- The accounting was filed.

- The accounting is open for inspection for three months from the date of the notice.

(12 Del. C. 2302(b).)

16. Please describe if there is any special action needed to discharge the estate fiduciary from continuing liability for actions taken on behalf of the estate.

In Delaware, filing the final account initiates the process for discharging the personal representative from continuing liability for actions taken on behalf of the estate. Beneficiaries have three months from the date notice of the filing of the accounting was mailed to raise exceptions to the accounting. If no exception to the account is filed within the three month period, the court must approve the account, subject to the power of the court to disallow items of the account. (12 Del. C. §§ 2301 to 2309; see Question 15.)

When the account is approved, the Register discharges the personal representative from continuing estate liability (see *May v. du Pont*, 229 A.2d 784, 787-88 (Del. 1967)).

Expense and Timeline

17. What are the expected costs for a typical estate proceeding?

The primary costs of an estate proceeding in Delaware are:

- Filing and closing fees in the appropriate court. Fees vary depending on the county that has jurisdiction over the estate administration. Closing costs are:
 - in New Castle County, 1.75% of the net personal estate plus .25% of the net personal estate (technology fee for deaths occurring on or after July 1, 2018) plus \$20 for the recording and indexing (unless prepaid) plus \$5 for each release to be filed with the Register of Wills;
 - in Sussex County, 1.25% of the net personal estate plus \$20 for recording and indexing and \$5 for each release filed with the Register of Wills; or
 - in Kent County, 1.75% of the net personal estate, plus additional fees.

(See [Kent County](#), [Sussex County](#), and [New Castle County](#).)

- Personal representative commission and attorneys' fees. In Delaware, the personal representative and the personal representative's attorney are entitled to reasonable fees. There is no fee schedule that sets out what is considered reasonable. (Del. Ch. Ct. R. 192; see Question 9.) Most attorneys advise personal representatives to keep time records of the work they have completed for the estate and to charge an hourly rate according to the factors that Delaware courts may consider in determining a reasonable commission or fee (Del. Ch. Ct. R. 192(b); see Question 9: Personal Representatives).

The expected costs of an estate proceeding vary greatly depending on:

- The size of the estate.
- The nature and complexity of the estate assets.
- Whether a bond is required (see Question 8).
- Whether there are any challenges to the estate.
- Whether creditor claims were filed.
- How involved an attorney needs to be in the estate matters.

18. How long does the typical estate proceeding take?

The typical timeline for opening and closing an estate in Delaware varies depending on:

- The nature and complexity of the estate assets.
- Whether there is direction to sell real estate in the decedent's last will and testament.
- Whether creditor claims have been filed.
- The particular Register of Wills where the estate proceeding is filed and the amount of work the Register has during the estate administration.

The personal representative has 12 months from the date the court issues letters to file the first account and an account must be subsequently filed each year until the estate is closed (see Question 15). However, the Register of Wills commonly and liberally grants extensions. Obtaining a particular extension may depend on the specific Register of Wills, the number of extensions requested for a particular estate, and the reason the extension is needed. Each requested extension may not exceed six months. (12 Del. C. §§ 2301(c) and 2311.)

The time required to fully administer an estate is determined by several factors, many of which are beyond the control of the personal representative. It is not uncommon in Delaware for estate administration to last longer than 12 months and in some cases may even take years.

Miscellaneous Estate Proceedings and Processes

19. Please list and describe any simplified or special proceedings or non-court processes for transferring a decedent's assets at death that are available in your state.

Small Estate Administration Using a Small Estate Affidavit

The Register of Wills may authorize distribution without letters on the submission of the decedent's original will, if any, and an affidavit under oath attesting that:

- No petition for the appointment of a personal representative is pending or was granted.
- Thirty days elapsed since the decedent's death.
- The value of decedent's personal estate other than property described under 12 Del. C. §§ 1901(b) and (c) and other than jointly owned property, does not exceed \$30,000.
- All known debts of the decedent are paid or provided for.
- The surviving spouse's allowance under 12 Del. C. § 2308 was paid, provided for, waived or has expired by the lapse of time under 12 Del. C. § 2308(b) (see [State Q&A, Wills: Delaware: Question 8: Disinheriting a Testator's Spouse](#)).
- The decedent did not own real estate in Delaware, either solely or as tenants in common.
- There is furnished to any person owing any money, with custody of any property or acting as registrar or transfer agent of any evidence of interest, indebtedness, property or right of the decedent

an affidavit showing the existence of the above conditions and the right of the affiant to receive that money or property or to have evidence of that money or property transferred for the statutory purpose.

- The distributees receiving payment, delivery, transfer, or issuance from a small estate affidavit are accountable to any person with a prior right of distribution and to any intestate distributee or personal representative appointed later (12 Del. C. § 2307(a)).

(12 Del. C. § 2306(a).)

On the Register's certification of the small estate affidavit, the decedent's personal property (for example, a motor vehicle) can then be transferred, without the need to commence a formal estate administration appointing a personal representative under either:

- The decedent's will.
- The Delaware intestacy statutes.

(12 Del. C. § 2306(a), (c).)

The small estate affidavit certification may generally be issued to the individuals (or a trustee or agent under durable power of attorney of one of the following individuals who may be incapacitated) in the following order:

- Named executor in the decedent's will who is not disqualified, if the decedent has a will. For more information on the qualification of an executor, see [Question 7: Qualification of Personal Representative](#).
- The decedent's spouse
- Any child.
- Any parent.
- Any sibling.
- Any grandchild or any grandparent.
- A funeral director licensed in Delaware.

The small estate affidavit certification may also be issued to the trustee of a trust created by the decedent, without order of preference. (12 Del. C. § 2306(a), (b).)

Ancillary Administration

If a decedent who is not a Delaware resident dies leaving assets in Delaware, including real or personal property, credits due from Delaware residents, or liens on property in Delaware, an ancillary administration may be required to gather and distribute the decedent's Delaware property. Ancillary administration:

- Gives a personal representative in Delaware the authority to administer the estate of a nonresident decedent regarding the Delaware assets.
- Is typically secondary to a domiciliary administration in the place of the decedent's domicile and through which the bulk of the decedent's assets are administered.

(12 Del. C. §§ 1307, 1504(b), and 1505.)

Appointment of Ancillary Personal Representative

An ancillary personal representative must be qualified to act in Delaware to be appointed and is appointed in the statutory order of priority, similar to the qualifications and order of priority in a Delaware domiciliary administration (see Question 7).

Petition for Ancillary Administration

A petition for the grant of letters of ancillary administration uses the same form and generally has the same requirements as a petition for grant of letters of administration. However, rather than file the original will, the petitioner must file an exemplified copy of the will and documents showing probate administration was opened in another jurisdiction. (12 Del. C. §§ 1565 and 1568; see Question 5: Petition for Authority to Act as Personal Representative.) The Register of Wills often appreciates a cover letter explaining the nature of the matter. The petitioner must electronically file documents first, with original hard copies to follow (see Question 4).

To initiate ancillary proceedings, the petitioner must file these documents in the county where the decedent owned property (12 Del. C. § 1565). The petitioner also must file an inventory of the decedent's Delaware assets, even if the decedent's sole Delaware asset is real estate to which title transfers immediately

on the decedent's death (for example, an interest in a joint tenancy with right of survivorship) (12 Del. C. § 1568; see Question 12: Estate Inventory).

Administration and Distribution of an Ancillary Estate

An ancillary personal representative is generally under the same obligations and has the same responsibilities as a personal representative in a formal administration (12 Del. C. § 1568).

Within 18 months of the grant of ancillary letters in Delaware, the personal representative of the ancillary estate in Delaware must file with the Register of Wills proof that all death taxes, together with any interest or penalties, due to the domiciliary state of that decedent were paid or secured, or that none of these taxes, interest, or penalties are due, as the case may be, unless it appears that letters testamentary or of administration were issued on the decedent's estate in the decedent's state of domicile (12 Del. C. § 2352).

Waiver of Probate Requirements and Formal Probate

20. What types of estate proceedings or probate requirements can be waived by will in your state? Specifically, please discuss:

- Whether any particular language is required to accomplish a waiver and if so, please include the language.
- Whether it is common to waive these estate proceedings or probate requirements.

Estate Proceedings

A testator cannot waive formal administration by will in Delaware. Delaware offers a small estate administration as an alternative to formal administration but this depends on whether the estate qualifies for small estate administration, not whether the will waives formal administration (see Question 19: Small Estate Administration Using a Small Estate Affidavit).

The personal representative can and may want to obtain waivers of notice of and consent to accounting from those requiring this notice (for example, the beneficiaries) in certain circumstances (see Question 13: Waivers and Consents to Accounting).

Bond Requirements

In Delaware, a will may contain a provision waiving the requirement for a personal representative:

- To execute and file a bond. However, this language is limited in its effect as the court can require a bond despite this language.
- To file an inventory or formal accounting with the Chancery Court for the administration of a trust created under the will (a testamentary trust), if any.

(See Question 6: Waivers and Consents to Accounting and Question 8.)

Counsel can include the following sample waiver language in a Delaware will:

“No bond or other security shall be required of my Personal Representative or of my Trustee in any jurisdiction.”

“No Personal Representative or Trustee shall be required to submit any inventory or accounting with respect to the administration of any trust created under the will unless specifically ordered to do so by a court of competent jurisdiction.”

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