

Thinking through priority for appointment as Personal Representative

Minnesota Statute § 524.3-203

Priority for appointment in testate cases (with a will):

- Check the testamentary document (will or codicil(s)) for the party(ies) the testator nominated (524-3-203(a)(1))
- First person nominated is willing to serve and qualified - no problems

In the event, the first person nominated is unable or unwilling, look to see if the nominated PR has the authority to nominate a person to serve in their place. This would be **specific language**, such as: *the nominated PR has the power and authority to nominate an additional or successor PR*. The nominated PR does not have an automatic right to nominate someone else to serve in their place.

If the testator did not give this power to nominate, review the will/codicil to see if there is an alternate personal representative named. If yes, is that person willing and able to serve and will they qualify?

Another thing to check for in this nomination paragraph is if there is a time frame within which the testator said the nominated PR had to have their appointment in place, usually measured from the date of decedent's death.

Caveat: If there is a time frame such as 30 or 60 days and that time has elapsed then the nominated person has lost their priority for appointment and you move on to the nominated alternate.

If the nominated alternate renounces the original PR does not automatically get their priority back. You have to work through the priority process to re-establish the priority.

Nominated Co-PRs:

- Do both nominated Co-PR's want to serve? If yes, no problems.
- If only one is willing to serve and the other wants to renounce then you need to look to see what the will/codicil says about either of the originally nominated Co-PR's acting alone.
- If the will is silent and one of the nominated Co-PR's renounces, that renunciation takes the other nominated Co-PR out with the one renouncing and they **both lose their priority** for appointment.
- The Court cannot infer that it would be approved by the testator that either one could act without the other.
- The priority for the one that wants to serve may be re-established but you have to work through the process to get to that point.
- Look to see if there is an alternate PR nominated in the will/codicil.

- If there is no other choice for the PR then you have to go to the statute to seek priority for appointment

Once the nominated PRs in the will have been exhausted and you move to the statute look to see if:

- There is a spouse devisee, (524.3-203(a)(2) if no
- Who are the devisees? (524.3-203(a)(3)
 - All devisees have equal priority for appointment.
 - For informal probate you will need nominations/renunciations from **all** the devisees.

Drafting renunciations and nominations:

- When a nominated PR under a will/ codicil renounces priority for appointment state that specifically in the nom/renunc.
 - “I was nominated in the last will/codicil of decedent X”.
 - “I was nominated in the last will/codicil of decedent X **and** I have the power to nominate an additional or successor PR”.
 - Do not say I am the son or daughter, relationships don’t result in priority it is the legal interest that controls.
 - Be specific as to where their authority comes from to nominate, for example,
 - “I am a spouse/devisee under decedent’s will”
 - “I am a devisee under decedent’s will”
- Go back to the first page of the application and in item #2 where it says, “I am an interested party because _____, fill in where the priority is derived from. This paragraph and the paragraph on priority have to match.
 - I am nominated in decedent’s will/codicil.
 - I am the nominee of all those with equal priority for appointment.
 - I am the nominated alternate personal representative in decedent’s will/codicil.

Priority for appointment in intestate cases (without a will):

524.3-203(a) (4) surviving spouse

(5) other heirs

If your priority derives from “Other heirs” you need to obtain a complete picture of the family because of the concept of right of representation. If there is a right of representation such as at the level of brothers or sisters, issue of a predeceased sibling will have equal priority to serve as PR along with their aunts and uncles. For informal probate, nominations/renunciations will have to be obtained from all parties.

Parents are the biological or adopted parents of a decedent. If one parent has predeceased, the surviving parent is the only party with priority. (We will want the name and date of death of the predeceased parent to put in the court order.)

Appointing someone who does not otherwise have priority for appointment under the statute.

Minnesota Statute § 524.3-203 (e) this must be done in a formal probate proceeding.

If someone with priority nominates someone who would not otherwise on their own have priority under the previous sections of this statute the appointment needs to be made in a formal probate proceeding.