

Probate In Common Form

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ANNOUNCEMENTS

By Alonna Warns

New Home

We have moved into our new home.



Address changes should be made to mail and notices and orders for hearing: C-300.

As you get off the elevators and face the atrium the file room is located to your right and the public counter to your left.

The public window is divided: on the left facing the counter the Probate section and to your right the Mental Health section.

Security/Guests



The court tower security/ weapons check area is still under construction. Be sure to allow sufficient time to go through security especially if your case is at 9AM or 2PM.



We understand that there are times when you will want to bring a new attorney or paralegal/legal assistant with you to an appointment with the Regis-

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trar so they can better understand the informal probate process. Julie and I ask that if you wish to bring someone with you that you make this known at the time of scheduling your appointment so that we are prepared. Generally, in the time between appointments we do the necessary paperwork to complete a file. An unexpected guest can delay this work. In addition, depending on the number of persons, an alternate meeting room may be necessary and will need to be reserved. We appreciate your cooperation.

Paperless Files

The paperless informal file pilot project reached its six month completion date in December. A quality control initiative has been completed and we had outstanding success in tracking all paper documents to their corresponding electronic images. The administrative manager will now present the results to bench for a decision on how long we keep the paper documents after the date of filing. The positive outcome of this project in the Registrar's

Office will now allow us to consider using the paperless process in other probate areas. Stay tuned for further updates.

SERVICE REDUCTIONS

Due to a budget shortfall, all court counters and phones are closed to the public on Wednesdays from 1:30 to 4:30 p.m.

This includes suburban locations as well as the Hennepin County Government Center downtown.

The "quiet time" has allowed us to work without

Missing an Issue of the Newsletter??

No you are not missing a 2007 issue of Probate In Common Form. Only three issues came out during this very busy year. The Informal Paperless Imaging Pilot Project along with staff shortages, training, and our move to C-3 have occupied my time. Thank you for your words of encouragement and satisfaction with the newsletter. I am so pleased that many of you have found it useful in your daily work. The e-mail address book that I have created has worked extremely well in letting the Court communicate with you at times of change. The address book came about through creation of the newsletter and your interest in being a part of the distribution list.

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interruptions to try and keep the paper work current inspite of vacancies that have gone unfilled due to budget constraints.

WWW.



We have a new technological tool.

The public access website for the courts permits viewers to access the Register of Actions page for each case.

Use this tool to check for issuance of letters, demands for notice, claims, issuance of orders and decrees.

Document viewing is not available.

**www.mncourts.gov/
publicaccess**

Another way to use the Register of Actions page is to see why letters may not have issued.

Is there an Affidavit of Mailing on file?

Is the Acceptance and Oath on file?

If a bond is required, has the bond been filed?

If any of these are missing and your office is responsible for the filing, check to be sure the document has been sent to the Court.

TIPS FOR FORMALS

Housekeeping Tips for formal documents –

Disclaimers – please provide the following information:

- an address for the disclaimant
- a date of death for the decedent

TIPS FOR FORMALS

- a last address for the decedent

The court information system is name based and it is extremely difficult to identify the correct parties when all we are given is the name of the decedent and the name of disclaimant.

Lost Will/Lost Codicil

The Notice and Order for Hearing must include the word “lost” in all places where the will or codicil is mentioned.

The copy of the lost or otherwise unavailable will needs to be attached to the Statement of Contents **not** the petition.



Copies of signed decrees

Copies of signed decrees are e-mailed to the attorney of record as the

TIPS FOR FORMALS

120 Hours

document is scanned into the court file.

Please provide the attorney's e-mail address in the attorney information block of your petition for settlement and distribution.



The filing fee for a new petition in Hennepin County is **\$252.00**. The fee can be combined in the same check as a request for certified copies of letters or a decree.

Do not combine filing fees for multiple cases in the same check, in the event that one of the petitions is not accepted there will be a delay in opening the case that is acceptable while the Court waits for a new check. Individual checks for each file number assists the accounting

department in processing the payment.

Summary Petitions -

The petitioner must specify on the caption of the petition whether they are filing as Exempt or Non-Exempt. The court cannot fill in this information.

The Notice and Order for Hearing should be reviewed so that if the filing is for an exempt summary that the notice to creditors is crossed out.



Designate Heirs - heirs need to be designated on all petitions, testate or intestate. An intestate petition without designated heirs will be returned. If

the closest living heir is a cousin, keep in mind that both the maternal and paternal heirs need to be designated. If this information is not available the petition can be filed with the added language: "reserving determination of heirs".

120 Hour Requirement

Probate proceedings have a variety of time frames within any given estate but there is one that is of primary significance for commencing the estate and determining distributees. The 120 hour requirement shows up two times on the informal application and has two different meanings. Let's review the pertinent statutes. Minnesota Statutes Chapter 524, Part 3 Informal Probate and Appointment Proceedings; Application; Contents.

120 HOURS AND WITHIN THREE YEARS

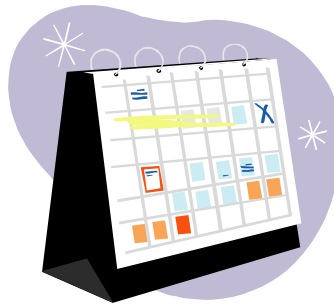
Minn. Stat. § 524.3-302 states that the Registrar upon receiving an application for informal probate of a will shall issue a written statement of informal probate “if at least 120 hours have elapsed since the decedent’s death.”

The first 120 hour requirement looks at the decedent’s date of death and the date the Registrar can accept an application for informal probate.

Five days (120 hours) need to elapse between the date of death and the appearance before the Registrar. The applicant is making the 120 hour allegation on the application, so it follows that the application must be signed after the 120 hours or 5 days have elapsed. Many of the applications we receive are not dated. The date of the application is entered in the statement or order of informal ap-

pointment. **We need to have the application dated.**

The opposite end of this time spectrum is that not more than 3 years have elapsed since the decedent’s death.



The allegation on the application reads: “At least 120 hours, but not more than 3 years (except as permitted by Minn. Stat. §524.3-108), have elapsed since Decedent’s death.”

To summarize: a personal representative can be appointed during the following time period: 6th day after death up to 3 years from date of death.

Exceptions

Minn. Stat. §524.3-108 “No informal probate proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator’s domicile . . . may be commenced more than three years after the decedent’s death, except . . . “

- if a previous proceeding was dismissed because there was doubt as to the fact of decedent’s death;
- once the date of death of an absentee or disappeared or missing person is established the three year time period begins; and
- a proceeding to contest an informally probated will and to obtain appointment of a personal representative in the case where the will

HEIRS/BENEFICIARIES AND 120 HOURS

contest is successful, a proceeding may be commenced within twelve months from the informal probate or three years from the date of death.

The statute goes on to say that these time limitations do NOT apply to:

- proceedings to construe a probated will,
- proceedings to determine heirs of an intestate, or
- proceedings to determine descent

Special Administrator

This statute does not prevent a special administrator from being appointed to:

reduce assets to possession and administer these possessions pursuant to an order of the Court,

- or make distribution of any residue to the heirs or distributees determined pursuant to a descent or summary proceeding,

even if the three year time period has expired.

Heirs 120 hours

The second 120 hour requirement has to do with the designation of individuals as heirs.

Minn. Stat. §524.2-104

A person must survive the decedent by 120 hours in order to be determined an heir.

Failure to survive means that the person is treated as though they had predeceased the decedent for purposes of:

- Homestead
- Exempt property
- Intestate succession

Also of interest is the 120 hour requirement found in Minn. Stat. § 524.2-702 (a)

Who needs to survive 120 hours?

Trust beneficiary where the grantor of the trust reserved a power to amend trust provisions;

Devisee;

Appointee of a power of appointment taking effect on the death of the holder of the power;

Failure to survive the 120 hours results in that person being considered . . . “to have predeceased the grantor, testator or holder of the power for purposes

SURVIVORSHIP CLAUSES

of determining title to property “ which would have passed to that person by the trust instrument, by the will, or by the exercise of the power of appointment.

Section (d) says that this 120 hour requirement will not apply where the will, trust, or documents exercising the powers of appointment have made provisions that are different from the statute.

For example, an additional survivorship clause in a will.

“In order for any beneficiary to receive any benefits under this will they have to survive me by a period of thirty (30) days.”

The 30 day survivorship clause will control if the court determines that the document is the valid last will and testament of the decedent.

The effect of an additional survivorship clause in a will is that notice is required to be more extensive if the application is presented prior to the expiration of that additional time. For example:

Date of death is September 15, 2007.

Will says any beneficiary has to survive decedent for a period of 30 days.

Application is presented to the Registrar on October 1, 2007.

Will gives all the rest, residue and remainder of the estate to decedent’s three children, per stirpes.

The Registrar will not know if the 3 children have survived the decedent by 30 days if the application is granted on October 1, 2007.

The practice in Hennepin County is: the contingent beneficiaries must be

listed on the application and given the same notice as the 3 children if the applicant wants to go forward on October 1st. The alternative is to wait out the extra survivorship time.

P R Appointment Time Frames

If in the section of the will nominating the personal representative, the testator says the appointment must occur within a specified time, i.e. 60 days, the Registrar and the Court will take a strict construction of the stated time.

If more than 60 days has elapsed since the date of death and the named personal representative has not come forward to be appointed they will lose their priority and we go to the named alternate or the statutes to determine priority.

HENNEPIN COUNTY DISTRICT COURT
FOURTH JUDICIAL DISTRICT



Hennepin County Government Center
300 South 6th Street, C300
Minneapolis, Minnesota 55487-0340

Phone: 612-348-3244
Fax: 612-348-2130

<http://www.courts.state.mn.us/districts/fourth/>

TO:



Decrees of Descent and Medical Assistance Clearance

Serving the Commissioner of Human Services with a copy of the notice of probate is not the same as obtaining a clearance from medical assistance for purposes of issuing a decree of descent.

The determination of descent statute says that a medical assistance clearance must be on file with the court before the court can issue a decree of descent. The court is receiving many affidavits of mailing notice to the Commissioner of Human Services in lieu of the clearance form. This misconception is delaying significantly the issuance of the descent decrees.

The October – November 2004 issue of the newsletter previously addressed this issue.

If you need the forms e-mailed to you contact Alonna Warns.