

# Probate In Common Form

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Enjoy the lazy days!



## SEPARATE WRITINGS

By Alonna Warns

### Minn. Stat. § 524.2-513

A testator may prepare a separate writing disposing of miscellaneous items of tangible personal property not specifically devised in the will.

What cannot be listed on a separate writing?

- Money
- Coin collections
- Property used in a trade or business

Separate writings can be prepared in a formal manner by an attorney or more informally by the testator when convenient for him or her. The Court sees separate writings on notebook paper, placemats and any type of paper that apparently is handy at the time the testator

feels the need to make the designations. The following requirements are essential to admissibility to probate of a separate writing, upon the testator's death,

**the writing must:**

- be referred to in the will
- be in the testator's handwriting or signed by the testator
- describe the item and the devisee with "reasonable certainty"

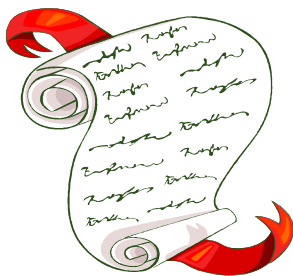
**Note: A separate writing does not have to be executed with the same formalities as a will or codicil.**

When preparing an informal application or a formal petition for probate, be sure to include the persons named in the separate writing (s). The Registrars often see nicknames used in a separate writ-

## SEPARATE WRITINGS

ing. A connection between a formal name and a nickname on the separate writing should be made on the interested party list.

In the event that the testator left multiple lists and there is a duplicate devise of an item, the written list with the latest date will control the disposition of the item.



The statute says the following about the separate writing:

- The will may refer to the separate writing as a document “to be in existence at the time of the testator’s death”
- The separate writing may be executed before or after the date of the will
- The testator may alter the separate writing after its initial preparation
- The separate writing may have “no significance apart from its effect upon the dispositions made by the will”

### Informal probate and separate writings

Include the words “separate writing” in the caption of your application if the applicant is requesting the probate of a separate writing. (A separate writing used to be treated as a part of the will – now it is treated as a separate and distinct document to be accepted, or not, for probate.)

The Wherefore clause, should request the probate of the will “and the separate writing”.

## RETIRING, MOVING, DOWNSIZING!!!

Scenario: attorney has a filing cabinet drawer with original wills left by clients over time, no contact with client/testator, attorney wants to retire, move his/her office to the home, etc. The question arises, **What to do with the original wills?** Attorney doesn’t know whether the testator is dead or alive and doesn’t want to spend the time and/or money to trace the testator, what can be done with the will (s)?

The court accepts for filing wills for safekeeping and for custodial purposes. In effect acting like a safe deposit box for that document only. The cost to file a will for safekeeping is \$20.00; there is no charge to file a custodial will.

**Do not destroy the original will.**

## SEPARATE WRITINGS

If the will refers to a separate writing and no writing was located make sure that the application says:

Sample language:

**“That no separate writing as referred to in Will Article. “x” was found following the decedent’s death.”**



**Formal probate accountings and separate writings**

If the decedent owned the items on the separate writing at the time of death, account for the items on the Inventory and follow through to the Final Account.

If the decedent has items of personal property listed on a separate writing and other miscellaneous personal property, do not lump all the personal property together under a heading such as

this:

“Miscellaneous Household Goods and Wearing Apparel” valued at \$5,000.

The auditor of the estate file will have no way of knowing if the separate writing items are included in the aforementioned general statement.

- The personal representative may distribute the items on a separate writing without a court order.
- List the distributions in the “Devises Paid and Distributed” section of the Final Account.
- Obtain a receipt for the distribution (s).
- File the receipts with the final account.



**Formal decrees of distribution and separate writings**

If the decedent gave the items listed on the separate writing away prior to death or otherwise did not own the items, make a statement of that fact in the section of the proposed decree that talks about the will provisions.

Sample language:

**“That no separate writing as referred to in Will Article. “x” was found following the decedent’s death.”**

Alternatively,

If the decedent owned the property specifically devised on the separate writing and the personal representative distributes all of these items then use the following language.

Sample language:

**“The decedent provided for the distribution of his miscellaneous personal property pursuant to the**

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**terms of a separate writing.**

**That said miscellaneous personal property has been distributed heretofore and receipts therefor have been filed herein.”**

No itemization of the bequest or the devise is required.

- If the decedent owned only some of the items listed on the separate writing, be sure to itemize the items owned and distributed. State clearly which items were not owned or were previously distributed.

Separate writings on the whole are bothersome. Their value is apparent only if viewed from the “sentimental” standpoint of the recipient of the item.

Taking photographs or videos of the items is a way to protect the personal representative as to the condition of the item at the time he/she took possession on behalf of the estate.

## CEMETERY LOTS

If not otherwise stated in the will, the cost of mailing and or shipping items of miscellaneous personal property is usually listed in the Expenses of Administration section of the final account.



### Disposition of Cemetery Lots

Occasionally, a client will come into your office to open an estate with a cemetery lot as a probate asset. It is important to review the relevant sections of the statute because of the infrequency of disposing of this asset and the unique way in which the lot (s) are transferred.

[Minn. Stat. § 306.29](#)

#### Disposal of lots by owners

- A will has no affect on a cemetery lot unless the lot is specifically mentioned in the will, **and**

- The devise of the cemetery lot must be limited to one specific person.

#### Q and A

**What happens if decedent’s probate assets include a cemetery lot and the will is silent with respect to this asset?**

**Answer:** The cemetery lot passes according to the laws of intestacy and does **not** become a part of the residue of the estate.

**Cemetery lots do not pass as a part of the residue of a decedent’s estate.**

**What happens if the will devises the cemetery lots to more than one person?**

**Answer:** That provision of the will becomes inoperative and the cemetery lot passes according to the laws of intestacy.

**What happens if the testator gives the personal representative the authority to dispose of the cemetery lots in his or her discretion?**

## CEMETERY LOTS

**Answer:** The provision becomes inoperative and the cemetery lot passes according to the laws of intestacy.

**Conclusion:** The provisions of **Minn. Stat. § 306.29** must be complied with or the laws of intestate succession will apply to the distribution of the cemetery lot (s).

### Intestate Succession Transfer

Transfer of a cemetery lot by intestate succession is governed by **Minn. Stat. §525.14**.

The cemetery lot passes free of all debts to the following:

1. Decedent's **surviving spouse – life estate** with the right of interment

Remainder interest to the person who would be entitled if there were no surviving spouse;

If there is no person enti-

tled to the remainder interest surviving the decedent, the surviving spouse takes the entire fee interest with the right of interment.

2. No spouse, to the decedent's **eldest surviving child**;

3. No surviving child, to the decedent's **youngest surviving sibling**;

4. No spouse, no child, no sibling, and not sold then to the **cemetery association or private cemetery in trust**, as a burial lot for the decedent's relatives as the governing body of the organization feels is proper.



### Inventory Final Account

Cemetery lots are treated as real property in the Inventory, Final Account and any Decree of Distribution. These documents should have a legal description for the lot (s) similar to any other real property including the County where located.

**Sample:**

**Cemetery lot situated in the County of \_\_\_\_\_, State of Minnesota, described as follows:**

**Lot Twenty-two (22), Section Twenty-two (22), Block Nine (9), St. Mary's Cemetery, according to the recorded plat thereof,**

**OR**

**Lot 479C, Section 5, Lakewood Cemetery Association, according to the recorded plat thereof.**

## CEMETERY LOTS

### Decrees

#### Sample findings for the decree (testate):

- No provision in will for the disposition of the cemetery lot

**Finding:** That decedent failed to dispose of his/her cemetery lot by the terms of his/her will. That said cemetery lot will pass under the laws of intestate succession as found in Minn. Stat. § 525.14 as hereinafter assigned.

Assignment section caption, before the actual assignment language, of the decree would be altered to read:

“That title to the personal property and real property and **cemetery lot** described herein. . . “

**Assignment:** To \_\_\_\_\_, the whole of said cemetery lot, in fee.

- Devise cemetery lot to two or more persons

**Finding:** That decedent further provided for the distribution of his/her cemetery lot to his/her two brothers, \_\_\_\_\_ and \_\_\_\_\_, in equal shares.

That said \_\_\_\_\_ and \_\_\_\_\_, brothers and sister, the only siblings of the decedent, survived decedent.

That said decedent left neither spouse nor issue surviving and that \_\_\_\_\_ is the youngest sibling of the decedent.

**Assignment:** To \_\_\_\_\_, the whole of said cemetery lot, in fee.

#### Sample findings for the decree (intestate):

- Spouse survives, no children survive

**Finding:** That \_\_\_\_\_, spouse, survived decedent.

That said decedent left him/her surviving no children.

#### **Assignment:**

To \_\_\_\_\_, spouse, the

whole of said cemetery lot, in fee, with right of interment therein.

- Spouse survives, children survive

**Finding:** That \_\_\_\_\_, spouse, and \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, children survived decedent.

That \_\_\_\_\_ is the oldest child of decedent.

**Assignment:** To \_\_\_\_\_, spouse, a life estate with right of interment therein, and remainder over to (eldest surviving child of decedent), in fee.

- No spouse, children survive

**Finding:** That decedent left him/her surviving no spouse.

That \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, children, survived decedent.

That \_\_\_\_\_, is the oldest child of the decedent.

**Assignment:** To \_\_\_\_\_, the whole of the above described cemetery lot, in fee.

## CEMETERY LOTS

- No spouse, no children, only siblings survive

**Finding:** That said decedent left him/her no spouse nor children.

That \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ brothers and sister, survived the decedent.

That \_\_\_\_\_ is the youngest sibling. of the decedent.

**Assignment:** To \_\_\_\_\_, the whole of the above described cemetery lot, in fee.

- No spouse, no children, no siblings survive

**Finding:** That decedent left him/her surviving neither spouse, child nor sibling.

**Assignment:** To (name of cemetery association), the cemetery lot in trust as a burial lot for decedent and such of his/her relatives as the governing body thereof should deem proper.

## ESTATE MONITORING

### REMINDERS

The court monitors **formal supervised** estates for closing in accordance with **Minn. Stat. § 525.475.**

The statute says if an order of complete settlement of the estate is not entered within 18 months after appointment of the personal representative, the court **shall** order the personal representative and the attorney to show cause why this has not occurred.

At 16 months, the court sends out an automatic reminder notice on all formal supervised estates -18 month deadline is coming up. The inventory, final account, vouchers, petition for order of complete settlement and proposed decree should be filed. ( The sixteen months is calculated from the date of the order appointing.)The due date

on this notice is thirty days.

At the end of the reminder period, a Notice and Order to Proceed will issue which gives the personal representative 30 days to file the required closing documents **or file a petition and proposed order to extend time.**

If there is no response to the Notice and Order to Proceed an Order to Show Cause will issue. The court will not accept a partial filing of documents once the Order to Show Cause has issued.

Failure to comply with the Order to Show Cause could result in costs, sanctions or other remedies as determined by the court.

The court would like to suggest that a pending date for the closing documents be set in the firm's calendaring system for 16 months to coincide with the reminders that will be mailed out.

HENNEPIN COUNTY DISTRICT COURT  
FOURTH JUDICIAL DISTRICT



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

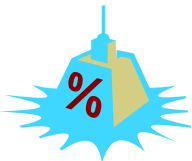
Phone: 612-348-3244  
Fax: 612-348-2130

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

TO:



## INTEREST RATE



**Minn. Stat. § 524.3-904** provides that the personal representative is to pay interest on general pecuniary devises at the “legal rate” beginning one year after the first appointment of the personal representative.

The legal rate of interest can be found at [www.mncourts.gov/?page=1641](http://www.mncourts.gov/?page=1641)

The website shows annual rates going back to 1990.

**The interest rate for 2008 is 4%.**