

CHAPTER I

INTRODUCTION

The Estate Planning and Fiduciary Law Section of the North Carolina Bar Association is pleased to publish the Eighth Edition of the North Carolina Estate Administration Manual for the exclusive use of the lawyers of North Carolina in the administration of estates of persons who die domiciled or owning property in North Carolina.

The Manual contains a comprehensive discussion of the mechanics of estate administration and reviews in practical terms the problems with which the lawyer must deal in representing the personal representative (PR) or serving directly as PR of a decedent's estate. Although the Manual reviews in detail the various legal and practical issues involved in the administration of estates, the Manual is primarily intended to be a procedural guide for lawyers and is not a digest of substantive North Carolina probate and fiduciary laws. For a detailed discussion of the substantive laws in this area, lawyers should review Wiggins, *Wills and Administration of Estates in North Carolina* (4th Ed.), and other similar treatises. Also, lawyers should consult Edwards, *North Carolina Probate Handbook* (2010-2011 Ed.) for forms and descriptions of probate procedures that are not reviewed in depth in this Manual.

The first half of the Manual details the various non-tax aspects of estate administration and is divided into sections which are tabulated for easy reference. The sections are organized chronologically, from pre-qualification procedures in the initial stages of an estate administration to the filing of the Final Account. Each section contains a narrative discussion of the relevant issues, checklists and forms that can be readily adopted for use by legal assistants, secretaries and other office personnel under the supervision of an attorney. The remainder of the Manual contains a discussion of the tax aspects involved in estate administration and appendices. Appendix A is an overview of fiduciary income taxation of non-grantor trusts and estates. Appendix B is a comprehensive example of an estate's administration. The Manual no longer includes standard AOC, IRS, and North Carolina Department of Revenue (NCDR) forms. The Manual will just refer to AOC Form ____, IRS Form ____, or NCDR Form __ and the most up-to-date forms can be found online at the following Web addresses:

www.nccourts.org/Forms/FormSearch.asp for AOC Forms

www.irs.gov/app/picklist/list/formsInstructions.html for IRS Forms

www.dorn.com/ for NCDR Forms

The Manual continues to include all nonstandard forms.

If the PR is a corporate fiduciary, many of the procedures outlined in this Manual will be the responsibility of the corporate fiduciary and not the lawyer. However, the fiduciary and lawyer should be aware of the provisions of N.C.G.S. § 84-5, which impose restrictions on corporate fiduciaries in settling estates of decedents in North Carolina, to avoid the unauthorized practice of law by such fiduciaries.

ADVISORY OF ADDRESSES FOR TAX RETURNS
Updated for January 1, 2016 for Federal Returns
and for North Carolina Returns*

Form 706		Department of the Treasury Internal Revenue Service Center Cincinnati, OH 45999
Form A-101		N.C. Department of Revenue Post Office Box 25000 Raleigh, NC 27640-0100
Form 4768 (Appl. for Extension of Time for Form 706)		Department of the Treasury Internal Revenue Service Center Cincinnati, OH 45999
Form 709 (Federal Gift Tax Return)		Department of the Treasury Internal Revenue Service Center Cincinnati, OH 45999
Form 1040	<u>Not Enclosing A Check:</u>	Department of the Treasury Internal Revenue Service Kansas City, MO 64999-0002
	<u>Enclosing A Check:</u>	Internal Revenue Service P.O. Box 931000 Louisville, KY 40293-1000
Form 1040-A	<u>Not Enclosing A Check:</u>	Department of the Treasury Internal Revenue Service Kansas City, MO 64999-0015
	<u>Enclosing A Check:</u>	Internal Revenue Service P.O. Box 931000 Louisville, KY 40293-1000
Form 1040-EZ	<u>Not Enclosing A Check:</u>	Department of the Treasury Internal Revenue Service Kansas City, MO 64999-0014
	<u>Enclosing A Check:</u>	Internal Revenue Service P.O. Box 931000 Louisville, KY 40293-1000

Form 1040-ES		Internal Revenue Service P.O. Box 931100 Louisville, KY 40293-1100
Form 4868 (Appl. for Auto Extension for Individual Return)	<u>Not Enclosing A Check:</u>	Department of the Treasury Internal Revenue Service Center Kansas City, MO 64999-0045
	<u>Enclosing A Check:</u>	Internal Revenue Service P.O. Box 931300 Louisville, KY 40293-1300
Form 1041	<u>Not Enclosing A Check:</u>	Department of the Treasury Internal Revenue Service Center Cincinnati, OH 45999-0048
	<u>Enclosing A Check:</u>	Department of the Treasury Internal Revenue Service Center Cincinnati, OH 45999-0148
Form 1041-ES		Internal Revenue Service Post Office Box 804526 Cincinnati, OH 45280-4526
Form 1041-A (US Information Return Trust Accumulation of Charitable Amounts)		Department of the Treasury Internal Revenue Service Center Ogden, UT 84201-0027
Form 5227 (Split-Interest Trust Information Return)		Department of the Treasury Internal Revenue Service Center Ogden, UT 84201-0027
Form D-407 (NC Fiduciary Return)		N.C. Department of Revenue Post Office Box 25000 Raleigh, NC 27640-0640
Form 56 (Notice Concerning Fiduciary Relationship)		File with Internal Revenue Service Center where the person for whom you are acting is required to file tax returns

Form 2848
(Power of Attorney and Declaration
of Representative)

Internal Revenue Service
5333 Getwell Road, Stop 8423
Memphis, TN 38118
Fax: 855-214-7519

Form 8821
(Tax Information Authorization)

Internal Revenue Service
Memphis Accounts Management
Center
5333 Getwell Road, Stop 8423
Memphis, TN 38118
Fax: 855-214-7519

*Returns filed via United States mail are properly filed using the addresses listed above.

A different address may be required for returns filed via private delivery service, and some returns may be required to be filed electronically. Practitioners should consult the applicable IRS or NCDR instructions.

CHAPTER II

PRE-QUALIFICATION

A. COMPILING INFORMATION

1. Preliminary Information

a. First Communication

Shortly after a decedent's death, the attorney's first contact in representing a decedent's estate will often be a telephone call followed by an initial conference with members of the decedent's family and/or the Personal Representative ("PR").

b. Documentation to Request

If the first contact is by telephone, the family member or PR will often ask what documentation, if any, should be brought to the conference. The attorney should request the original Will, if available, a certified copy of the death certificate, if issued, and any information the PR and family might have readily available concerning the decedent's property. The property list may include cash, notes, automobiles, business interests, retirement accounts, life insurance policies, real estate, securities, and bank accounts. Reviewing a copy of a decedent's most recent income tax returns can be insightful.

2. Checklists

After being retained by the estate, the attorney should obtain and review all documentation relating to the decedent's property, including both probate and non-probate assets.

a. Preliminary Checklist of Decedent's Property

A preliminary checklist should be given to the family or the PR at the first conference. The checklist will assist in gathering the preliminary information needed to qualify the PR. Form II-1 provides a sample checklist.

b. Inventory of Decedent's Assets and Liabilities

The attorney should complete a detailed inventory of the decedent's assets and liabilities to ensure that all information pertinent to settling the decedent's estate and filing tax returns is requested. Additionally, the attorney should request or obtain all deeds and other documents relating to the decedent's property and investments. Form II-2 provides a sample inventory template.

c. Personal Information Worksheet

The attorney should obtain general information about the decedent, the PR and the beneficiaries in order to administer the estate. Form II-3 provides a sample worksheet. The requested information includes but is not limited to:

1. Names;
2. Addresses of the PR, beneficiaries, and other persons involved in the settlement of the estate;
3. Social Security numbers of the PR and all beneficiaries; and
4. Other related information.

Estate administration checklists are important tools that the attorney and legal staff will use to gather and organize documentation while administering the estate. Obtaining this information early in the administration of the estate will facilitate the timely and efficient preparation of tax returns, inventories and accountings.

B. INFORMATION FOR FAMILY AND PR

1. First Conference

a. Amount of Information to Cover

The attorney must use personal judgment when deciding how much ground to cover at the first conference. However, certain basic information should be reviewed as early as possible with the PR. In many cases, the family and PR will not have any experience with the requirements of administering an estate in North Carolina. At a minimum, the attorney should provide a procedural overview and general timeframe, as well as identify any potential issues so that the PR or family knows what to expect.

b. Procedural Overview

The procedures involved in settling the estate should be reviewed with the PR, including qualification of PR, notice to creditors, 90-day inventory, and preparation of tax returns. In addition, a timeframe for administration should be discussed with the family and PR.

c. Time Frame

The family may be under the impression that an estate can be closed within a matter of weeks and may be unaware that there is a minimum of three months for settling even the simplest estate. N.C.G.S. §§ 28A-14-1 and 28A-19-3. An explanation of the estate administration