UNDERSTANDING ESTATE ADMINISTRATION

A Guide for North Carolina Executors and Trustees Navigating the Probate and Trust Administration Process

by Carolina Family Estate Planning

Understanding Estate Administration

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by the Estate Administration Team at
Carolina Family Estate Planning

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Why We Wrote This Book

Losing a loved one is hard. The days and weeks after a loss are often fraught with grief, questions, and, unfortunately, family complications. It's a terrible time to try to think through a legal process clearly. And while the North Carolina General Statutes are the guiding law about what happens to an Estate upon the death of a North Carolina resident, they are not exactly casual reading material. The law is made to address the variety of unique situations that may come up. It can be confusing, long-winded, and it might even seem like it's written in another language.

We wrote this guide to help.

Whether you have just lost a spouse or a parent, you believe you may be entitled to a part of an Estate, or you've just received a letter from the Court, you could probably use some help. It's often a challenge just to know where to start. Maybe you're not even sure what questions to ask and whom to ask. How do you know you're getting good advice and doing it right?

This guide will give you an overview of the Estate Administration process in plain English. We hope that after reading this guide, you will feel comfortable knowing your next steps and knowing what questions to ask.

The Estate Administration team at Carolina Family Estate Planning is here to make the Probate and Estate Administration process easier. We help our clients by taking on the detailed, challenging work of Estate Administration so that you can focus on your own life and family, with the peace of mind of knowing that you are respecting your loved one's wishes.

This is a high-level overview of North Carolina estate proceedings. It will help you get familiar with the process, so you can take the first step. However, after getting started, there are several different paths the process can take—too many to explain in this guide. If at the end of this guide you determine that you need additional assistance, you should seek the counsel of a qualified Probate and Estate Administration attorney.

DISCLAIMER

We hope you will find this book to be a helpful overview of the North Carolina Estate Administration process. This book is in no way intended to provide legal advice. Nothing in this book should be construed to be legal advice, and your receipt and reading of this book does not create an attorney-client relationship with Carolina Family Estate Planning or any of its attorneys.

Every situation has its own unique circumstances. If you would like more information about engaging the services of our firm to receive legal advice, please contact our office at 919-694-6116 or **welcome@carolinafep.com**.

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One More Thing

We know that Probate and Estate Administration can be overwhelming. We are going to simplify it as much as possible. However, there is a little bit of specialized vocabulary involved, and we use the official terms here to avoid confusion. To help, we've included a glossary in the back of the book. You may wish to flip to it now and bookmark it for future reference.

First Things First: What to Do Right Away

During the first few days after a loved one passes, everything seems to go by very quickly. Your priorities need to be focused on taking care of yourself and your family. The Probate and Estate Administration process can generally wait for a couple of weeks to give you time to mourn and spend time with loved ones. However, there are items that need immediate attention. In times like these, it's helpful to have a checklist and a notebook. Here's what's needed:

1) **Determine whether urgent legal action is needed.** In some circumstances, it may be necessary to file an immediate petition with the Court. If any of the following apply, make an appointment with a qualified Probate attorney as soon as possible:
   - Minor children (under age 18) who no longer have a surviving parent or guardian.
   - The deceased owned a business.
   - Anticipating a family dispute over the Estate.
   - Other circumstances that threaten to harm the Estate or other individuals if immediate legal action is not taken.

2) **Locate Estate Planning documents.** If you know or suspect that your loved one had a Will and other legal planning done, attempt to locate these documents. Often, these will be stored with "memorial instructions" that explain, for example, what he or she wanted for a funeral and burial or cremation.

   The Estate Administration process will be much easier if the original Will can be located. If you cannot locate the original documents, try contacting the attorney the Decedent may have used, as they may have copies of the documents on file.

   If there is no Will, someone will need to be appointed by the Court as the Administrator to manage the Estate.

   We cover some things to look for in the Will and how to proceed without a Will later in this guide.

3) **Make Funeral Arrangements.** If available, use the memorial instructions to guide arrangements for the funeral. Check to see whether there is a pre-paid funeral plan in place—often there will be a small insurance policy for this specific purpose.

   Do not use the assets of the Estate (e.g., the Decedent's credit cards) at this point. If a loved one wishes to cover the costs of the funeral, they will be reimbursed for any out-of-pocket expenses they incur. Otherwise, we recommend asking for an

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extension on funeral expenses. A letter indicating that there are sufficient funds in the Estate to pay funeral costs may be required. Keep all contracts and receipts from the funeral home.

The funeral director will order death certificates on your behalf. We recommend that you order at least 10 certified death certificates from the county, though you can order more at a later time, if needed.

4) **Secure the House and Estate Property.** The home, vehicles, and any other personal property should be secured until the Executor and/or Trustee has been appointed.
   - Arrange for the care of any pets.
   - Store vehicles in the garage, if possible.
   - Consider changing the locks on the home.
   - Take photos of jewelry or other small valuables. Consider locking them in a safe or safe deposit box for the time being.

   Do not let family members take any property of the Estate until Probate is opened, the inventory is complete, and the Executor or Administrator has approved the distribution!

5) **Begin Collecting Important Documents.** Estate Administration is the process of accounting for the property left after someone passes away and distributing that property to those who are legally entitled to it. To do that, you'll need a full picture of the Decedent's financial situation, including all assets and debts. Gather and organize any bank statements, credit card statements, deeds, titles, business documents, and any other financial documents you find or receive in the mail.

6) **Begin Making Key Contacts.** Even if you haven't yet been appointed as executor or trustee, there are a few important contacts that you should make as soon as possible:

   - Social Security Administration: Notify the Social Security Administration of your love one's passing. Often the funeral home may do this for you, but it is still a good idea to follow up separately to claim the $255 death benefit and any applicable benefits if there is a surviving spouse or dependent children. You can call the Social Security Administration at 1-800-772-1213.

   - If your loved one was a veteran, contact the Veteran's Administration as soon as possible, as your loved one may be entitled to additional benefits for funeral or burial costs. In some instances, a surviving spouse or dependent children may also be eligible for continuing benefits. You can read more about VA Memorial benefits at **https://explore.va.gov/memorial-benefits**

   - If your loved one was receiving a pension, call the pension administrator to notify them of your loved one's passing.

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7) **Preserve Assets and Keep Accounts Open.** Until the Probate is opened, your primary concerns should be, 1) taking care of yourself, your surviving loved ones, and the Decedent's memorial instructions; 2) preserving value in the Estate; and 3) keeping your options open to maximize value for the Beneficiaries. Therefore:
   - Don't close any bank accounts or roll over any IRAs, 401(k)s, or other retirement plans. You may not have authority to do so until the Probate is opened, and there may be opportunities to preserve and protect these assets for Beneficiaries.
   - Do cancel utilities and non-essential services. If no one is living at the home, cancel services such as cable television, internet service, phone service, and any magazine and newspaper subscriptions.
   - Notify the homeowner's insurance carrier if the home is vacant. A higher premium may be required on homes that will be vacant longer than 60 days, but the alternative is the insurance company may not cover damage incurred if they were not informed the house was vacant.
   - Notify the auto insurance carrier that any vehicles belonging to the Estate will not be driven. This may reduce the premium. However, the policy should not be cancelled until after Probate is opened and the vehicle is sold or distributed.

   Do not attempt to use the Decedent's power of attorney to pay bills or perform any other function. Powers of attorney become void upon the death of the maker. Continuing to use a power of attorney after death could be considered as fraud.

8) **Open the Estate with the Court.** In some cases, it may not be necessary to Probate the Estate. However, in most instances, it will be necessary for practical purposes. For example:
   - Unless the property is in a Trust, you cannot change the title to real estate without opening Probate.
   - Often, financial institutions will not discuss details of the deceased's accounts until an Executor or Administrator has been appointed by the Court.

Settling an Estate: An Overview of the Process

Being named Executor or Trustee of your loved one's estate is an honor—your loved one tasked you with the important duty of managing his or her end-of-life affairs. However, serving as Executor or Trustee is also a huge responsibility that comes with a lot of specific duties.

The process of settling an Estate or Trust should be thought of more as a marathon than a sprint. With the exception of small estates (less than $20,000 or $30,000, depending upon the nature of the Estate), it usually takes six to twelve months to properly administer an Estate. Any disputes that arise during the administration of the Estate can delay Estate Administration significantly (sometimes years).

The CFEP Estate Administration Process is designed to guide you through the process of administering your loved one's affairs as smoothly and efficiently as possible. Depending on the size and nature of your loved one's Estate, some of the meetings or phases can be skipped or combined for greater efficiency.

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Our goal is to help minimize the stress and anxiety and ease the burden of handling the Estate Administration, so you can get back to what is most important—remembering your loved one and celebrating their life.

Phase 1: Information Gathering

Prior to beginning any formal legal process, filings, or documentation, it's important to first take a 10,000-foot view of the Estate. During the Information Gathering phase, you should begin gathering important documents. This may include your loved one's Last Will and Testament and any Trust documents, check book, bank statements, credit card statements, business documents, deeds, automobile titles, life insurance policies, retirement account statements, tax returns, and other important documents.

You will want to consider meeting with and retaining a law firm to guide you through the Estate Administration process, if you haven't yet hired a lawyer to assist you. While being named as an Executor or Trustee is an honor, it also comes with a significant amount of personal liability. An Executor or Trustee is held *personally liable* if they do not handle the Estate correctly. Exercising due diligence and hiring a reputable law firm to assist you limits your liability exposure.

Phase 2: Legal Authority

The next phase is to execute and file the appropriate legal documents and/or Court filings to become legally recognized as the Executor or Trustee of the Estate. Prior to being legally recognized as Executor or Trustee, you do not yet have the legal authority to act on behalf of the Estate or Trust or to sign documents on behalf of the Estate or Trust.

For an Estate without a Last Will and Testament, you would petition the Court to be appointed as Administrator of the Estate. From a practical perspective, "Administrator" is more or less the same as an "Executor." It is merely a subtle legal distinction that reflects that this is an Estate without a Last Will and Testament that formally nominates an Executor. For an Estate with a Last Will and Testament, you would petition the Court to be recognized as Executor.

The term "Personal Representative" is sometimes used as a more general term to encompass either Administrator or Executor. For the purposes of this guide, we'll generally use the term "Executor" to generically refer to an Administrator, Executor, or Personal Representative, as Executor is the term people are most familiar with.

When petitioning the Court for appointment, there are additional supporting actions that may be required, such as the taking of an Oath, formal resignation by others named as Executor who do not wish to serve, and possibly posting a bond insuring the Estate against inappropriate actions on your part as Executor.

If there is a Last Will and Testament, it must be submitted to the Court for Probate. Technically the term "Probate" means "to prove the Will"—meaning that the Court

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accepts and approves the Will as meeting the basic legal requirements. Following the "Probate" of the Will comes Estate Administration—the actual handling of the Estate and claims against the Estate. Generally, people refer to this entire combined process as "Probate."

The Court will issue formal documents recognizing you as either Administrator or Executor of the Estate: Letters of Administration if there is not a Will; Letters Testamentary if there is a Will.

If the Decedent had a Trust, the Trust document will include specific instructions regarding whom shall be appointed as Successor Trustee. Often, the Successor Trustee(s) are the same individual(s) named as Executor under the Will.

The Successor Trustee of a Trust becomes legally recognized by signing a Certificate of Trust. The Certificate of Trust sets forth key provisions of the Trust, including information regarding the Decedent, the name of the Trust, who is named as Successor Trustee, the mechanism by which the Successor Trustee is being appointed (i.e., the death of the Decedent), and that the Successor Trustee has accepted the role of Trustee.

Phase 3: Fiduciary Responsibility

By being formally recognized as Executor or Trustee, you have accepted certain fiduciary responsibilities for the proper and prudent management of the Estate Administration. As mentioned above, hiring a law firm to guide you through the administration process is a smart way to reduce your personal liability. Your law firm should provide you with guidance regarding your duties as Executor or Trustee and should guide you through the administration process to ensure your responsibilities are carried out in a timely, organized, and accurate manner.

Once you have been appointed as Executor or Trustee, it's time to start notifying key organizations and institutions regarding your role. This generally includes notifying:

- Any Beneficiaries of the Estate;
- Any financial institutions with whom the Decedent held accounts, life insurance policies, annuities, or similar;
- The Social Security Administration;
- The Veteran's Administration;
- The Internal Revenue Service;
- The Decedent's employer (or former employer if the Decedent was retired); and
- Known creditors of the Estate and unknown creditors of the Estate by newspaper publication.

Phase 4: Inventory & Valuation

During this phase, you will identify and gather all your loved one's assets, including those owned individually, in trust, or owned jointly with someone else. The appropriate

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steps during the Inventory and Valuation phase can vary significantly depending upon the nature of your loved one's estate, but generally this phase will involve:

- Locating and gathering the assets of the Estate (particularly in today's world of online banking and online statements, this can be more difficult than it sounds);
- Opening a checking account for the Estate for use during the Estate Administration process;
- Obtaining verifications of date of death values of all estate assets; and
- Preparing an inventory of the Estate assets.

Phase 5: Creditors & Taxes

As Executor or Trustee, you have a fiduciary duty to properly identify and notify creditors of the Estate, determine the validity of all claims presented against the Estate, and then satisfy the claims of the Estate from the Estate assets.

If there are insufficient liquid assets in the Estate to satisfy claims against the Estate, then it may be necessary to sell Estate assets in order to satisfy claims. If all the assets of the Estate are insufficient to satisfy valid claims against the Estate, then the North Carolina General Statutes dictate a specific order of priority in which claims against the Estate should be settled until all estate funds have been depleted.

Claims against the Estate include any tax filings required to be filed on behalf of the Decedent or the Estate. This may include unfiled income tax or gift tax returns of the Decedent, income tax returns for income generated during the Estate Administration process, or an Estate tax return.

Generally, it will prudent for you to engage the services of a tax preparer to assist you with preparing and filing any applicable tax returns. If you do not have a tax preparer, your law firm should be able to provide you with an appropriate recommendation.

Phase 6: Distributions

Depending on the size and nature of the Estate, some distributions may be made during the previous phases, but often the bulk of the distributions should not be made until you have determined that there are sufficient assets to satisfy all claims against the Estate.

Depending on your loved one's instructions in their estate planning documents, the distributions may involve outright distributions to Beneficiaries, or the establishment of trusts for their benefit.

This phase generally involves an accounting to the Court and/or Beneficiaries regarding the assets of the Estate, claims and expenses paid by the Estate, and the distributions to be made from the Estate. To protect you from liability, the Court or Beneficiaries are asked to review and approve the accounting. Further, when making distributions to the Beneficiaries, you should ask the Beneficiaries to sign a Receipt and Release

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acknowledging the distribution and releasing you from liability—this is a critical step that should be handled with care. If you have engaged a law firm, they should help you with this step to ensure that you are limiting your liability.

Phase 7: Closing the Estate

The final phase will include petitioning the Court to certify that you have completed your duties as Executor and asking the Court to discharge you from your role as Executor. If you were required to obtain a bond, once you are discharged as Executor, you will cancel the bond.

By this point, there typically shouldn't be any assets remaining in the Estate, as they will all have been distributed to the Beneficiaries or to trusts for the Beneficiaries, so it should not be necessary to provide further notice to any financial institutions. However, you will want to notify the Internal Revenue Service that your fiduciary role has been terminated.

If you are serving as Trustee for any on-going Trusts for the Beneficiaries, then you'll want to review the Trust's instructions regarding any on-going duties as Trustee.

Lastly, you'll want to review any ongoing planning concerns or opportunities. For example, it may be appropriate for a surviving spouse to update estate planning documents or Beneficiary designations. Or, you or other Beneficiaries of the Estate may need to establish your own estate plans now that you have received an inheritance from your loved one.

Do Things the Right Way

Serving as Executor or Trustee can be a difficult and sometimes thankless role if the Beneficiaries do not understand the significant responsibility that you have had bestowed upon you.

Communicate, Communicate, Communicate

One of the biggest complaints that Beneficiaries raise is lack of communication. Insufficient communication often leads to inappropriate expectations or assumptions on the part of the Beneficiaries which can quickly escalate into a full-blown dispute.

The best course of action is to communicate with the Beneficiaries early and often. Don't be afraid to repeat yourself and don't hide information because you are concerned that it might hurt someone's feelings. However, do seek to convey information in a thoughtful and empathetic manner. If a Beneficiary has been disinherited or is inheriting less than they may have anticipated, it's okay to acknowledge that you understand their disappointment. Many Beneficiaries may have formed some sort of assumption about the size and nature of your loved one's estate which may be inaccurate. For example, there may be significantly less assets than anticipated or significantly more debts than anticipated.

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We've seen estates where the Decedent had previously received a rather large inheritance or windfall, leading the Decedent's Beneficiaries to assume there would be a large inheritance, only to discover that the Decedent had squandered most of the windfall or inheritance. In other estates, we've seen a Decedent who had the outward appearance of wealth, only for the family to discover that they were significantly in debt and had very little, if any, positive net financial worth.

Organization is Key

Estate Administration involves a significant amount of paperwork. It is critical that you stay organized. Maintain a calendar with all appointments and deadlines. Clear and organized record-keeping will also reduce the likelihood of estate disputes. From time to time during the Estate Administration process, you may be required to produce certain documents or receipts. Being able to produce them in a timely and organized manner will keep the Estate Administration advancing in an organized and efficient manner.

Follow the Law

This might sound obvious, but you'd be surprised how many Executors and Trustees don't understand or follow their legal duties. The North Carolina General Statutes set forth specific rules regarding the Estate Administration process that govern:

- Properly determining the validity of the Decedent's Will and/or Trust;
- Properly interpreting the terms of the Decedent's Will and/or Trust;
- Various required Court filings and accountings;
- Properly notifying known and unknown creditors of the Estate;
- Properly settling claims of the Estate;
- Proper filing of applicable tax returns and payment of taxes owed;
- Proper notification to Beneficiaries or potential Beneficiaries of the Estate; and
- Priority of distributions of the Estate if there are not enough assets in the Estate to meet all distributions specified in the Will or Trust.

Remember, as Executor or Trustee you are personally liable for complying with the law—meaning that if you make a mistake, you could be held responsible by a Court to correct the error. If such error caused financial harm to the Estate, then you would need to reimburse the Estate from your personal savings to correct the error. Therefore, many Executors and Trustees hire a law firm to assist them with the Estate Administration process. By hiring a reputable law firm to assist you, you limit your liability exposure by shifting your liability to the law firm's professional malpractice liability.

Take Care of Yourself

Remember, this is a marathon, not a sprint. Don't expect to complete the Estate Administration overnight. In addition to grieving the loss of a loved one, chances are that you have other responsibilities such as family obligations, a job, etc. Again, hiring a

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law firm to assist you can help ease some of the administrative burden so you can get back to your day-to-day responsibilities.

Contested Estates

What happens if, despite your best efforts, things are not peaceful? Estate disputes can cause permanent family rifts and can delay the Estate Administration process—sometimes by years. The most common disputes include:

- Fighting over who will serve as Executor or Trustee of the Estate;
- Challenges to the validity of the Will or Trust;
- Concerns that someone has stolen or misappropriated funds or property of the Estate;
- Discovery of unexpected Heirs such as an illegitimate child;
- Disappointed Beneficiaries due to certain expectations of the Beneficiary and/or lack of communication on the part of the Executor or Trustee;
- Disagreement about which assets should be sold and which assets should be kept;
- Concerns regarding whether the loved one's wishes are being honored.

As discussed above, serving as Executor or Trustee can be a time-consuming and emotionally draining process—particularly because you may still be in the process of grieving the loss of your loved one. Adding an Estate dispute can further aggravate such stress. If you have hired a law firm, they should assist you with navigating any disputes that may arise.

If you have concerns regarding an Estate dispute, we highly recommend that you seek professional assistance. While by no means exhaustive, the following is some advice regarding common points of estate disputes.

Misappropriation of Property of the Estate

As soon as possible after the death of a loved one, we recommend changing the locks on their personal residence. This will reduce the likelihood of other family members entering the home and "claiming" property or assets for themselves.

If you suspect that someone has inappropriately taken property from the Estate, then you should seek to stop the wrongdoer as soon as possible. Please know that such misappropriation on the part of the wrongdoer may not have been done with malicious intent but rather ignorance on their part as to the legal process of properly administering an Estate. As soon as possible, notify the potential wrongdoer and ask for immediate return of the property. Document everything and notify the Court to stop this wrongdoing as quickly as possible before additional estate property is lost.

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An Invalid Will Has Been Filed

The “Probate” or “proving of the Will” by the Court carries a rather minimal legal threshold. Upon the filing of a Will, if the Will meets basic legal requirements in terms of proper signature, witnesses, and notarization, the Court will assume it is valid and recognize it as such (see “The Will: At First Glance” for more information about the validity of a Will).

If you have reason to believe that the Will is invalid, you should bring it to the Court’s attention as soon as possible. Possible reasons for a Will to be invalid include:

- The discovery of a more recent Will executed by the Decedent that revokes the Will that has been filed;
- The discovery of a Codicil (an amendment to a Will) executed by the Decedent that revises the Will that has been filed;
- Someone committed fraud with regards to the Will, for example, by materially altering the document;
- The Will was signed by the Decedent under duress, under the undue influence of another individual, or the Decedent was not of sound mind when the Will was executed.

If you have reason to believe that an Invalid Will has been filed, then time is of extreme essence. You need to bring an objection to the Court as soon as possible to prevent the mis-administration of the Estate. Depending upon the nature of the allegation, you may need to meet a high burden to proof to establish the invalidity of the Will (such as in cases of purported duress or undue influence).

Arguing Over Role of Executor or Trustee

While we’ve already covered that the role of Executor or Trustee comes with a significant amount of responsibility and liability, it also comes with a significant amount of power. For example, in the absence of specific instructions in the Will or Trust, the Executor or Trustee will often determine which assets of the Estate are sold and which are to be kept.

Even though your loved one’s Will or Trust may have nominated an Executor or Trustee, that does not necessarily guarantee appointment. An Executor must be formally recognized and appointed by the Court. If the person nominated in the Will as Executor has a history of misappropriating your loved one’s assets, has significant health concerns that could impact his or her ability to serve as Executor, is a convicted felon, or other similar concerns, then the Court might not appoint them as Executor.

Sometimes, the individual(s) named as Executor or Trustee do not wish to serve. In this case, a formal resignation may be required. If no successors are named in the Will or Trust, then generally the Heirs will vote on a successor. Again, regarding Executor, the

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Court still must recognize and appoint any such successor who is nominated before they can serve in the role.

Disputes About Who Are Heirs of the Estate

In the absence of more specific definitions in the Will or Trust, the North Carolina General Statutes provide specific definitions of who is entitled to be an heir of the Estate—generally, there must be some sort of blood relationship. Generally, a child who was legally adopted by the Decedent is deemed to have a blood relationship, as are any descendants of the adopted child.

Disputes sometimes arise when there are claims of an unknown or illegitimate child of the Decedent. Genetic testing and/or birth records may be required to establish whether a blood relationship existed between the Decedent and the potential heir.

The Will: At First Glance

At our office, we have seen Wills ranging from 2 pages to 60-70 pages. Obviously, a 70-page Will is going to go into a little more depth than a 2-pager. However, at a high level, most Wills have just a few main functions:

1) Naming guardians for minor children;
2) Naming the Beneficiaries: who will receive what from the Probated estate;
3) Naming one or more Executors: who has responsibility for carrying out the Probate process;
4) Explaining what powers the Executor has at his or her disposal.

Note that if the Decedent had a Living Trust, there may not be much to the Will, as the Trust will determine how assets of the Trust are distributed. The accompanying Will is often a “Pour-Over Will” designed to put any Probated assets into the Trust, so that there is only one set of instructions for how to distribute the assets.

If you have been able to find a Will for the Decedent, it will play a major role in the Probate process.

Unlike how it might be portrayed by Hollywood, there is no formal “reading of the Will” meeting. However, beneficiaries will have access to a copy of the Will once the Estate has been opened.

Let’s go step by step through the process of reviewing a Will for the first time.

Step 1: What Kind of Will is It?

In North Carolina, there are three valid forms of Will that may be accepted by the Court:

1. Attested Will: This is the most common form of Will. It is a written document signed by the Testator and at least two witnesses.

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2. Holographic Will: This is a handwritten Will. The entire document must be in the Testator's handwriting and it must be signed by the Testator.

3. Nuncupative Will: This is an oral "death bed" Will dictated before two witnesses that were specifically requested to bear witness.

The North Carolina General Statutes provide separate very specific procedures for Holographic Wills and Nuncupative Wills. Due to the burdensome additional steps involved and uncertainty of whether the Holographic Will or Nuncupative Will will be accepted and properly interpreted, both Holographic Wills and Nuncupative Wills are rare used. For the remainder of this section, we will focus on the traditional Attested Will and will refer to it simply as the Will.

Step 2: Did the Decedent Sign the Will?

When opening an Estate in North Carolina, one of the very first stages is proving the Will. The Will is submitted to the county of residence of the Decedent, and it is the responsibility of the county Clerk of Court to determine whether the Will is valid. There are several criteria that the Clerk of Court will look at to determine the Will's validity.

First and foremost, is it signed? The signature page of the Will is usually either the last or next-to-last page. Though there are some special provisions if the maker (also known as the Testator) was unable to write a full signature when the Will was made, a Will in North Carolina is not valid unless it is signed according to the North Carolina's legal signing requirements.

If the Will is not signed, it will not be accepted by the Court.

Step 3: Were There Two Witnesses?

In addition to checking for the Testator's signature, the Clerk of Court will look for signatures from two witnesses on the signature page. If either of the witnesses is a Beneficiary of the Will or a spouse of a Beneficiary of the Will, the Probate process will be more complicated. Similarly, the witnesses must be competent. This generally means that they are age 18 years or older and have not been deemed incompetent by a court of law. If you have any concerns about the validity of the witnesses to the Will, please seek legal assistance.

If the Will is not signed by two competent witnesses, then it is not a valid Will.

Step 4: Is the Will notarized?

If the Will has been notarized, it will be far easier to submit it to the Clerk of Court than without. While being notarized is not expressly required, if the Will was not properly notarized, additional steps will be necessary, such as locating the witnesses and having each one sign an affidavit, or otherwise proving that the Testator's signature is authentic.

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Check for the following:

1) The Will is signed by the Decedent.
2) The Will is signed by two witnesses.
3) A notary paragraph like the one in the example is included.
4) A notary has signed the document.
5) The notary has stamped the document with a stamp that includes the notary's name and county where he/she is a registered notary.
6) The notary has indicated (either in writing or in the stamp) when his/her commission expires.

Step 5: Does the Will Contain a Self-Proving Statement?

Notarization of the Will in and of itself may not be sufficient. To constitute a valid "Self-Proved" Will—meaning a Will that stands on its own without any further affidavits from witnesses or proof of Testator's signature—the Will must contain a formal Self-Proving Attestation. A Self-Proving Attestation generally recites that the Will was signed and acknowledged by the Testator before the witnesses and notary. See the "Signature Page Example" on the next page.

Step 6: Are There Signs of Tampering?

Check to make sure the Will includes all its pages.

While it is not required in North Carolina to initial the pages of a Will, if any page is initialed, check to see if they all are initialed. If there is any inconsistency, such as evidence that a page is missing or has been added, or if the paper type is different in different parts of the document, the Clerk of Court may use their discretion to question the validity of the Will.

If the signature pages are properly executed and there are no signs of tampering, the Will will be accepted by the Court unless a formal objection is filed. If an objection has been filed—or if you think an objection may be filed—please seek professional legal assistance.

Once you have determined that the Will appears to be valid, review the content of the Will to determine who will play the key roles: the Executor; guardians, if the Decedent had minor children; and the Beneficiaries.

Step 7: Who is the Named Executor?

The Will should identify an Executor—the person the Decedent identified to manage the Estate. There may be multiple Executors named in the Will. The Will should identify whether the named Executors are to serve as co-executors, or if they are to serve consecutively. If the Will specifically identifies the Executors as Co-executors, then all serving individuals must sign off on each action during the Probate process, unless specific waivers are obtained from each Co-executor.

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If the Will does not specifically state that the Executors are Co-executors, the individuals are considered to be successor Executors. The second Executor would not serve unless the first Executor could not or declined to serve; the third would not serve unless the first and second could not; and so on.

Even though the Will may specify named Executors, they are not permitted to serve in this role until the Court has accepted the Will and issued a document called Letters Testamentary. The Letters Testamentary officially appoint the Nominated Executor as the actual Executor of the Estate.

The Executor, once appointed, will have the responsibility and authority to make decisions and act on behalf of the Estate. Once identified, confirm that the named Executor is willing and able to serve. Otherwise, a successor must be identified and the justification for appointing the successor Executor must be approved by the court.

Step 8: Who are the Beneficiaries?

The Beneficiaries are the people the Decedent designated to receive property in the Will. List the Beneficiaries and what each person is supposed to receive from the Estate according to the Will.

Keep in mind that just as the Executor must be approved by the Court, the distributions to Beneficiaries will also need to be approved. Creditors must be repaid first. And there are legal obligations determined by the state of North Carolina (such as the disposition of marital property) that may also apply.

Step 7: How Complex Will the Process Be?

Once we have determined that the Will is valid, that the Executor is willing and able, and that the Beneficiary distributions are feasible, there are several additional factors to consider when evaluating the complexity of the Probate process:

1) What are the Executor's responsibilities? Unless the Will waives certain requirements, the Executor may be required to fulfill certain requirements, such as acquiring a bond—insurance that they will follow through with their commitments—or filing inventory and annual returns for the Estate.

2) What are the Executor's powers? Often, a Will will list or otherwise document the actions an Executor may take on behalf of the Estate. If the Will does not explicitly provide the Executor with "expanded powers," it may be necessary to get Court approval before proceeding with many actions commonly required when settling an Estate, such as selling property of the Estate.

3) Are any named Beneficiaries or Executors likely to contest the provisions of the Will? The Court is required to consider the provisions of the Will. Probate proceedings are publicly available, and Beneficiaries are to be notified of certain actions taken by the Executor. If all parties do not agree to abide by the provisions of the Will, the Probate process is considerably more complicated.

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Signature Page Example

I, John Smith, sign my name to this instrument consisting of 60 pages on May 1, 2018 and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will, that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

John Smith

John Smith, Testator

We, Mary Andrews and Susan Brown, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the Testator, hereby signs this will as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Mary Andrews

Susan Brown

STATE OF NORTH CAROLINA)
) ss.
WAKE COUNTY)

Subscribed, sworn to and acknowledged before me by John Smith, the Testator, and subscribed and sworn to before me by Mary Andrews and Susan Brown, the witnesses, this day, May 1, 2018.

James T. Notary
Notary Public
James T. Notary

JAMES T. NOTARY
NOTARY PUBLIC
Wake County, North Carolina
My Commission Expires May 31, 2020

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What If I Can't Find the Will or Trust?

Studies have shown that approximately 55-60% of adults die without a Will. But what if you believe your loved one had a Will or Trust, but no one has been able to locate it?

First, know what you are looking for. Wills and Trusts can come in different formats and storage methods. It could be simply several pieces of paper stapled together; the pages could be held together with some sort of cover or binding; or the documents may be stored within a 3-ring Estate Planning Portfolio binder or similar.

Second, if there is a Will, you are ideally looking for the *original* Will, rather than a photocopy. While there are additional legal procedures that can be followed to Probate a copy of a Will, it will be significantly easier, and it will reduce the likelihood of an Estate dispute if you can locate the original document.

Here are some common places to look:

- Your loved one's home:
    - Home safe or fire proof box;
    - Filing cabinet or place where other important documents are stored such as birth certificates, social security cards, insurance policies and similar;
    - If they have moved since the time the Will was executed, it may still be packed away in a moving box;
- The office of the lawyer who drafted the Will;
- Your loved one's safe deposit box at the bank (a special process may be required to open and inventory the safe deposit box);
- The Clerk of Court's office—although rarely used, a person can file their Will with the Clerk's office during their lifetime;
- A safe at your loved one's place of business;
- With the Executor or Trustee named within the document; or
- With a bank or trust company if the bank or trust company has been designated to serve as Executor or Trustee.

If you have exhausted the above options and inquired with family members, then it may appropriate to proceed with the process of probating a photocopy of a Will (if a photocopy was located) or concluding that there is no Will and proceeding as an Intestate Estate—that is, an Estate where there is no Will. The North Carolina General Statutes provide specific instructions regarding how an Intestate Estate will be distributed to Heirs.

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Frequently Asked Questions

Is Probate and/or Estate Administration Necessary for My Loved One's Estate?

It depends on the nature of the Estate. Many assets pass outside of Probate and Estate Administration. For example, assets with Beneficiary designations such as retirement accounts and life insurance may pass outside of Probate.

Many individuals opt to use Trusts to keep assets out of Probate. However, it is important to understand that Estate Administration is still necessary with a Trust. If properly established, the Trust permits the Estate Administration to be handled privately, without court supervision.

Even if there do not appear to be assets in the Testate Estate, if there is a valid Last Will and Testament, North Carolina law requires that it be filed with the Clerk of Court in the county in which the Decedent resided at time of death.

If you need help determining the appropriate steps regarding Estate Administration and whether Probate is required, you should hire legal assistance.

How Long Does Estate Administration Take?

Administering an uncontested Estate generally takes between six months to a year. The process and time involved can vary depending upon the nature and complexity of the Estate.

If there is an Estate dispute, due to the nature of the legal system, the dispute may take months or years to resolve, which will then impact how long it takes to administer the Estate.

What Happens if There is No Valid Will?

The North Carolina Intestacy Laws provide specific rules regarding how an Estate will be distributed in the absence of a valid Last Will and Testament. The distribution rules under the Intestacy Laws involve several different factors, such as whether there is a surviving spouse, whether the Decedent had lineal descendants, and whether there are unborn children. If there is no spouse or lineal descendants, the Intestacy Laws then branch further out into the Decedent's family trust—potentially to parents, siblings, or further removed relatives.

Properly determining the appropriate Heirs and distribution shares in an Intestate Estate is critical to the proper administration of the Estate. We strongly encourage you to hire legal assistance to ensure the proper administration of an Intestate Estate.

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I Just Received a Notice from the Court. What Do I Do?

First, read the notice very carefully as it may include a deadline by which you must file a response or objection and if you do not file within the specific timeline, you may be prohibited from raising any such objection. If you need assistance with understanding the notice you have received, you may wish to hire legal assistance.

I'm Being Pressured to Sign Documents I Don't Understand. What Do I Do?

You should never sign a legal document without understanding what you are signing. During the Estate Administration process, there are times when the Beneficiaries or Heirs may be asked to sign certain documents. Generally, this is to make the Estate Administration process easier and to keep the process moving more efficiently. However, if you do not understand the nature of the document you are being asked to sign, ask for clarification before you sign the document, or consider hiring legal assistance.

What Legal Duties Does an Executor or Trustee Have?

Executors and Trustees have many legal duties under North Carolina law, including duties to ensure the proper administration and management of the assets of the Estate. This includes taking certain measures to safeguard the property of the Estate and to act in the best interests of the Estate. If an Executor or Trustee breaches their fiduciary duty, they may be held personally liable for such breach.

How Many Death Certificates Should I Order?

We recommend that you begin by ordering about 10 certified death certificates. You can always order more if they are needed. The funeral director will order these on your behalf.

How Do We Pay for My Loved One's Funeral?

First, review your loved one's important papers to determine whether he or she may have a prepaid funeral or cremation or some sort of burial life insurance policy or similar.

In the absence of any prepaid arrangements or burial life insurance, you'll need to determine an alternate way to pay for funeral and final expenses. Generally, you will not yet have access to the Decedent's estate to pay the funeral home. The most common option is for one or more family members to advance the costs of the final arrangements to be reimbursed by the Estate later. Other options for paying final arrangement-related expenses include:

- A funeral loan which is later paid off from the Estate;

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- Assigning a life insurance policy (see caution below); or
- Occasionally, a funeral home will agree to delay receipt of payment until the Decedent's accounts can be accessed, if accompanied by an attorney letter and proof that the Decedent's estate has sufficient assets to pay for the final arrangements.

You should exercise caution if you are considering assigning a life insurance policy to pay for final arrangements. Generally, with such an arrangement, the life insurance company will disburse all the funds to the funeral home. Then, once all the final arrangements have been paid for, the funeral home will refund the remaining funds to the Decedent's Probate Estate. But there's a problem with this—normally, when the life insurance hasn't been assigned, the proceeds pass outside of the Probate Estate and go directly to the Beneficiaries named on the policy. As such, the proceeds from a life insurance policy normally are not subject to the creditors of the Estate. If the funeral home refunds the remaining life insurance proceeds after payment of final arrangements to the Decedent's estate, then those funds now become subject to the creditors of the Estate.

Should I Notify the Bank or Close the Decedent's Bank Accounts?

There are several inaccurate myths pertaining to the administration process that should be addressed. Many people are under the mistaken impression that when someone passes away, the family should race to the bank and immediately close all accounts. Not only is this unnecessary (and depending on the circumstances, you may not even be legally authorized to do so) but doing so may cause an adverse tax consequence.

It may, however, be prudent to notify the bank of the Decedent's death. If notified, the bank will typically block any further charges to the account from expenses that may be on direct debit or online bill pay. This can prevent the account from going into overdraft status and getting charged overdraft fees by the bank.

Should I Open My Loved One's Safe Deposit Box?

If the Decedent had a safe deposit box at a local bank, it is important that you do not remove any contents of the safe deposit box. After the death of an owner, a safe deposit box must be properly inventoried by the Executor or Trustee according to specific procedures that generally include the presence of the Clerk of Court, a Deputy Clerk, or other Qualified Person as defined by law.

Is it Okay if the Family Meets at the House After the Funeral to Distribute Household Furnishings and Possessions?

No. Only a legally appointed Executor or Trustee has the authority to manage and distribute assets of the Decedent. Until the Executor has been formally appointed by the Court or the Successor Trustee has been legally recognized, none of the Decedent's possessions should be distributed. Even once appointed, you should proceed with

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caution. Often the Will, Trust, or Personal Property Memorandum of the Decedent may include specific instructions regarding the distribution of household furnishings and possessions.

Can I Continue to Access the Bank Account, Pay Bills, or Write Checks Using a Power of Attorney?

In a word—"NO"! Powers of attorney become void upon the death of the maker. Thus, continuing to use a power of attorney could be considered fraud. This also applies if you have online access to the Decedent's accounts—you should not transfer any funds or pay any bills online.

A Family Member Has Moved into the Decedent's Home and Refuses to Leave. What Do I Do?

If the person is residing in the home pursuant to a valid lease agreement, then you must abide by the terms of the lease agreement. Otherwise, if the home is part of the Estate, the Executor has the authority to determine who may reside in the home. If the home is part of the Trust Estate, then the Trustee has the legal authority to determine who may reside in the home. It is important to note that if the Executor or Trustee does authorize someone to live in the Estate home, even if it is a family member, the family member should pay fair market rent to the Estate, unless all Beneficiaries of the Estate agree otherwise.

If the person is residing in the home without the proper authority of the Executor or Trustee, then they can be evicted using the same process by which a landlord might evict a squatting tenant. The eviction process is handled through a different division of the Court from the Estate proceeding.

What if the Decedent Owns Property in Another State or Country?

The main estate proceeding, referred to as the Domiciliary Estate Administration, will take place in the county in which the Decedent resided at death. However, if the Decedent owned property in another state, then it is possible that an Ancillary Administration may be needed in the other state. The Ancillary Administration will be based upon the laws of the state where the out-of-state property is located. Similarly, if the Decedent owned property in another country, it will be handled in accordance with the laws of the other country.

It is important to note that although the property may be owned in another state or country, the property generally still needs to be included in the accounting of the Estate and on the tax returns of the Estate.

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What Is a Year's Allowance, Spousal Allowance, or Dependent Allowance?

By law, the surviving spouse of the Decedent is entitled to the first $30,000 of the Intestate or Testate Estate. Similarly, a dependent child of the Decedent may be entitled to a $5,000 allowance from the Intestate or Testate Estate.

The Court has specific forms for claiming such allowances. A Surviving Spouse can also renounce the Spousal Allowance if he or she does not wish to claim it.

What is the Surviving Spouse "Elective Share"?

When a married Decedent dies, his or her surviving spouse has a right to claim a portion of the Estate. It is referred to as the "Elective Share" because the surviving spouse must *elect* to claim such share by proper filing of a claim for elective share within six months of the Decedent's death.

Effective October 1, 2013, the Elective Share amount in North Carolina is based upon the length of the marriage:

- If the surviving spouse was married to the Decedent for less than 5 years, the elective share amount is 15%;
- If the surviving spouse was married to the Decedent for at least 5 years, but less than 10 years, the elective share amount is 25%;
- If the surviving spouse was married to the Decedent for at least 10 years, but less than 15 years, the elective share amount is 33%;
- If the surviving spouse was married to the Decedent for 15 years or more, the elective share amount is 50%.

The Elective Share laws also include very specific definitions for determining which assets count as part of the "Estate" for purposes of the calculation.

If you are a surviving spouse who is contemplating filing for an Elective Share, or if you are an Executor facing such a claim by a surviving spouse, we strongly encourage you to hire legal assistance.

What If Someone Has Abused Their Role as Power of Attorney or Executor?

If you are serving as Executor and have concerns that someone with a Power of Attorney abused their role, then you may pursue a claim against the wrongdoer on behalf of the Estate.

If you are a Beneficiary who has concerns regarding an Executor potentially abusing their role as Executor, then you should either object to the Executor's appointment

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(if they haven't yet been formally appointed by the Court), or you should consider petitioning the Court for removal of the Executor.

If you are facing either of these scenarios, we encourage you to hire legal assistance.

Can I Be Reimbursed from the Estate for Travel or Other Expenses?

When a loved one dies, a common question is along these lines: "My mother just died and I'm the Executor. I'm flying to North Carolina with my wife and children, and my sister and her family are coming too. Can I pay for all the travel, lodging, food, and similar expenses from the Estate or from my mother's checking account? That's what she would have wanted."

While this might sound like a reasonable request, as Executor, you must proceed with caution. An Executor or Trustee can be reimbursed for reasonable travel expenses incurred to properly administer the Estate including to clean up the Decedent's home. This also includes costs associated with final arrangements such as burial or cremation, and a funeral or reception. However, unless the Will or Trust has a specific clause indicating otherwise, paying for other family members' travel expenses from the Estate is generally not permitted.

Do I Get Paid to Serve as Executor or Trustee?

Unless the Will provides otherwise, Executors or Administrators may claim a commission of up to 5% of the Estate assets and receipts, as approved by the Clerk of Court. Similarly, unless the Trust provides otherwise, a Trustee is generally entitled to "reasonable compensation" for their work in serving as Trustee. However, it is important to understand that any such commission or compensation received is taxable income to you that you will be required to report on your personal tax return.

Similarly, if you hire a professional to complete most of the work, then it may not be appropriate for you to claim a commission or compensation, or at the very least, the amount of such commission or compensation should be reduced accordingly.

Given that (1) most Executors or Trustees are family members and are also Beneficiaries of the Estate, (2) most Executors or Trustees hire professional legal assistance; and (3) any such commission or compensation must be reported as taxable income, we find that most Executors or Trustees opt to waive commission or compensation. However, each situation is unique. Your attorney can provide you with guidance as to whether it may be prudent to claim a commission or compensation.

What Happens If the Debts of the Estate Exceed the Assets of the Estate?

When the debts of an Estate exceed the assets of the Estate, the Estate is an Insolvent Estate. For Insolvent Estates, the North Carolina General Statutes dictate a specific

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order of priority in which claims against the Estate should be settled until all estate funds have been depleted.

Do I Need to Hire a Probate Attorney to Help Me with the Estate Administration?

Ultimately, it depends on the nature of the Estate and your goals. We find that there are few truly “simple” estates—and those that are “simple” are generally ones that have less than $50,000 in total assets (including the value of the home). The more assets that are at stake, the more work there is to do, the more legal requirements involved, and the more decisions that need to be made.

Most people have little to no experience with settling an Estate, which results in a “you don’t know what you don’t know” hazard. Unfortunately, the Estate Administration process is fraught with potential landmines for the ill-informed and the Executor or Trustee is held *personally liable* for complying with the law—meaning that if you make a mistake, you could be held responsible by a Court to correct the error, and if such error caused financial harm to the Estate, you would have to reimburse the Estate from your personal savings to correct the error. Therefore, many Executors and Trustees hire a law firm to assist them with the Estate Administration process. By hiring a reputable law firm to assist you, you limit your liability exposure by shifting your liability to the law firm’s professional malpractice liability.

In addition, the role of Executor or Trustee can be incredibly time-consuming. Even a modest estate can require 10-20 hours per week of your attention, depending on what phase of Estate Administration you are in. This is a lot of work and responsibility to take on—particularly at a time while you are grieving the loss of your loved one and trying to meet your other day-to-day responsibilities such as family obligations and “day job” requirements.

We often find that when an Estate has more than $50,000 in total assets, the costs of hiring professional legal assistance are worth the savings in time, energy, hassle, headaches, and liability protection. In some instances, your attorney may even be able to spot monetary savings to the Estate, such as tax savings opportunities or opportunities to negotiate a discount on settling claims of the Estate.

How Much Will It Cost to Administer My Loved One’s Estate?

This is a common and reasonable question, but it can also be a difficult one to answer without a more detailed look at the situation.

First, depending upon the nature of your loved one’s estate, there are likely to be several professionals involved, including attorneys, accountants, and financial advisors. It is also common to involve appraisers for real estate or other property. And in some more complicated estates, it may be necessary to hire auctioneers, surveyors, business appraisers, or other professionals.

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When hiring a professional, the Executor or Trustee should have a formal written engagement agreement with the professional that outlines the scope of services being provided by the professional.

With regard to legal fees, specifically, we try—when permitted— to quote such services on a flat fee basis, considering the nature of the Estate and what actions we expect will be needed to complete the Administration process.

In other instances, we may be required to work on an hourly billing basis—either because the rules in the county where the Estate Administration is occurring do not allow for flat fee billing, or because there are too many “unknown” factors for the law firm to be able to properly establish an appropriate flat fee rate. Occasionally we may recommend a hybrid of the two with part of the work to be completed on a flat fee basis and part to be completed on an hourly billing basis.

As you consider the information that you’ve read in this guide, Carolina Family Estate Planning is available to help you with the estate administration process. Our process begins with an initial consultation that we call the “Information Gathering Meeting.” It’s an opportunity for you to gather some information about the law firm and our Estate Administration process while we gather additional information from you about your loved one’s estate. During the Information Gathering Meeting, we’ll give you a broad overview of what to expect during the Estate Administration process. Generally, near the conclusion of the Information Gathering Meeting, or shortly after the Information Gathering Meeting, we will provide you with a flat fee quote for assisting you with the Estate Administration process or a recommendation that the Estate Administration be handled on an hourly billing basis.

From there, both you and the law firm will sign a formal engagement agreement that outlines the scope of legal services being provided by the law firm and the agreed upon fee arrangement for such legal services.

From time to time, additional information may be discovered during the Estate Administration process that was not anticipated during the original scope of legal services which may require a separate legal fee to be quoted and agreed upon by you and the law firm.

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Common Probate Terms

During the Estate Administration process, you may encounter a lot of different legal terminology. Here are some common terms that you may encounter:

Administrator

If the Decedent did not have a Will, the person appointed by the Court to administer the Estate is referred to as the Administrator.

Attested Will

An Attested Will or Attested Last Will and Testament is a Will signed by the Testator and two competent witnesses.

Beneficiary

A person named in the Will or Trust to receive assets or property of the Decedent is referred to as a Beneficiary.

Clerk or Clerk of Court

Probate and Estate Administration is overseen by the Estates Proceeding section of the Superior Court in the county in which the Decedent resided at the time of Decedent's death. The Clerk of Court is an elected position that has numerous judicial functions, including matters relating to the Probate and Administration of Estates. The Clerk of Court then appoints numerous Deputy Clerks to help carry out these duties. During the Estate Administration process, you'll frequently hear reference to the Clerk or the Clerk's office or similar, as a generic reference to interaction with the Court.

Creditor

An individual or company that is owed money by the Decedent at the Decedent's time of death is a Creditor of the Estate.

Decedent

A person who has died is referred to as a Decedent.

Disclaimer

A Disclaimer or Renunciation is when an individual has a certain right, such as the right to be a Beneficiary or the right to serve as Administrator, but signs a legal document giving up such right.

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Estate

The Estate consists of the collective money, assets, property, property rights, and real estate owned by a person or Decedent.

Estate Administration

The legal process for gathering, inventorying, and then distributing the Decedent's assets and property to Creditors, Beneficiaries, and Heirs.

Executor

The person named by the Decedent in the Decedent's Will to be appointed by the Court to administer the Estate is referred to as the Executor. Because the term "Executor" is the one most commonly understood by the general public, this guide has used the term Executor to also include Administrator or Personal Representative, but technically, from a legal term definition, the term "Executor" only refers to someone specifically nominated in the Decedent's Will.

Grantor

The person who created a Trust. A Trustmaker may also be referred to as the Settlor or Trustmaker.

Heir

An Heir is a person who would potentially inherit from the Decedent under North Carolina law if the Decedent died without a Will.

Holographic Will

A Holographic Will is a handwritten Will written entirely in the Testator's own hand writing and signed by the Testator.

Insolvent Estate

An Insolvent Estate is an Estate where the Estate assets are insufficient to pay the debts, claims, taxes, and administrative expenses of the Estate.

Intestacy Laws

The State laws that determine who the assets of a Decedent will be distributed to in the absence of a valid Last Will and Testament.

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Intestate

An Intestate Estate is an Estate where there is no valid Last Will and Testament. North Carolina law provides specific guidance for determining the Heirs of an Intestate Estate.

Intestate Estate

Refers to the assets of a Decedent that are being administered in accordance with the Intestacy Laws.

Last Will and Testament

A Last Will and Testament, or Will, is a legal document communicating a person's wishes pertaining to the care of any dependents such as minor children and the distribution of their possessions.

Nominated Executor

The person named in the Will as Executor of the Estate is the Nominated Executor. The Nominated Executor does not legally have any authority to act on behalf of the Estate until formally being appointed by the Court as Executor of the Estate and taking an Oath to carry out the fiduciary duties of the role of Executor.

Nuncupative Will

A Nuncupative Will is an oral "death bed" Will dictated before two witnesses who were specifically requested to bear witness.

Personal Representative

Personal Representative is a generic term that refers to either an Executor or Administrator.

Petitioner

An individual who signs and files a motion or petition with the Court is referred to as a Petitioner. For example, one might petition the Court to open the Estate and be appointed as Executor. Or, one might petition the Court to contest the validity of the Will.

Probate

The technical definition of Probate is the legal process of submitting the Decedent's Will to the Court and having the Court deem that the document is the legal Last Will and Testament of the Decedent. Generally, when people use the term Probate, they are

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collectively referring to the Probate and Estate Administration process overall, but from a technical definition perspective, Probate and Estate Administration are two separate components of settling a Decedent's estate.

Renunciation

A Renunciation or Disclaimer is when an individual has a certain right, such as the right to be a Beneficiary or the right to serve as Administrator, but signs a legal document giving up such right.

Settlor

The person who created a Trust. A Trustmaker may also be referred to as the Grantor or Trustmaker.

Testate

A Testate estate is an Estate where there is a valid Last Will and Testament.

Testate Estate

Refers to the assets that are being administered in accordance with the Decedent's Last Will and Testament.

Testator

The Testator is as person that executed a Last Will and Testament.

Trust

A legal entity created by one party (referred to as either the Grantor, Settlor, or Trustmaker) which appoints a second party (referred to as the Trustee) to hold and manage any assets placed in the Trust for the benefit of a third party (the Beneficiary). Depending upon the nature of the Trust, a party may serve in more than one of the roles.

Trust Corpus or Trust Estate

The Trust Corpus, also known as the Trust Estate, consists of the collective money, assets, property, property rights, and real estate titled to a Trust.

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Trustee

The Trustee is the individual or company nominated by the maker of the Trust to manage the Trust assets in accordance with the instructions given within the Trust document.

Trustmaker

The person that created a Trust. A Trustmaker may also be referred to as the Grantor or Settlor.

Will

A Will, or Last Will and Testament, is a legal document communicating a person's wishes pertaining to the care of any dependents such as minor children and the distribution of their possessions.

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What Happens When You Call Carolina Family Estate Planning for Estate Administration Help?

At Carolina Family Estate Planning, we understand how overwhelming it can be to handle Probate or Trust Administration, especially after you've just lost a loved one. We strive to help our clients navigate this seemingly daunting process with compassion and care.

When you call our office, the first person you'll talk to is a Client Welcome Specialist. The Welcome Specialist will ask you what made you decide to call our office. She may ask some follow-up questions, and then she will work with you to identify the best next step to help you move forward.

If we believe we can help you with legal services, our Welcome Specialist will schedule a free case assessment by phone with our firm. During that call, we will dig a little deeper. We'll go through a list of detailed questions about your situation. After the assessment, a legal professional will evaluate the specifics of your case. Using this analysis, we will either invite you to our office to discuss an Estate Administration action plan or provide you with alternative guidance about what your next step should be.

We strive to make working with Carolina Family Estate Planning a remarkably enjoyable experience. We will prepare all the paperwork you need to work with the Court, Beneficiaries, and other Trustees or Co-Executors. At the end of every meeting, we will ask to make sure we've answered all of your questions. We will reliably follow up on any open issues. And throughout the Administration process, we will provide you with regular updates about your case.

We want you to feel confident that you are in control of the process and that everything is done right, as the law requires. Most importantly, to every extent possible, we want to help you carry out your loved one's wishes as they would have wanted.

If you are facing the challenges of Probate or Trust Administration, and you think you might need help, please don't go it alone. Call Carolina Family Estate Planning at 919-694-6116, or email us at **welcome@carolinafep.com** to get started on a free case assessment today.

With all our best,

The Carolina Family Estate Planning Team

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About Carolina Family Estate Planning

Jackie Bedard's estate planning and estate administration practice, Carolina Family Estate Planning, is focused on guiding clients through the complicated, often confusing, maze of balancing family protection, wealth preservation, and cherished family values in the planning process.

Jackie determined early in her career that the way estate planning is traditionally practiced, typically only focused on financial wealth, is far too limited and short-sighted. She believes estate planning and administration should not just be about passing on financial wealth, but also should include preserving intellectual, spiritual, and human wealth—who you are and what's important to you.

Jackie is a member of WealthCounsel, ElderCounsel, the North Carolina Bar Association, and the Wake County Bar Association. She has served as a board of director member of the North Carolina chapter of the National Academy of Elder Law Attorneys and on the board of directors of Guiding Lights Caregiver Support Center.

Jackie was named by Cary Magazine as a 2015 Mover & Shaker for her contributions to the community. In October 2015, she received a Superb 10.0 rating by Avvo, a legal rating system.

In 2017, Jackie was awarded Best Attorney in Cary Magazine's Maggy Award competition. Each year, Cary Magazine awards the Maggy Awards to area residents' favorite service heroes in Western Wake County, based on a tally of more than 11,000 votes.

Jackie earned her Bachelor of Science degree in Economics at MIT and graduated law school magna cum laude in the top 7% of her class at the University of Richmond School of Law.

Jackie resides in Cary with her husband, Dan, and their two dogs, Nala and Nelly. Jackie also enjoys CrossFit, running, reading, hiking, cycling, music, and more.

To learn more about Jackie and to receive useful advice and information, please visit our website at **www.CarolinaFEP.com**

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Losing a loved one is hard. The days and weeks after a loss are often fraught with grief, questions, and, unfortunately, family complications. It's a terrible time to try to think through a legal process clearly. And while the North Carolina General Statutes are the guiding law about what happens to an Estate upon the death of a North Carolina resident, they are not exactly casual reading material. The law is made to address the variety of unique situations that may come up. It can be confusing, long-winded, and it might even seem like it's written in another language.

We wrote this guide to help.

Whether you have just lost a spouse or a parent, you believe you may be entitled to a part of an Estate, or you've just received a letter from the Court, you could probably use some help. It's often a challenge just to know where to start. Maybe you're not even sure what questions to ask and whom to ask. How do you know you're getting good advice and doing it right

The Estate Administration team at Carolina Family Estate Planning is here to make the Probate and Estate Administration process easier. We help our clients by taking on the detailed, challenging work of Estate Administration so that you can focus on your own life and family, with the peace of mind of knowing that you are respecting your loved one's wishes.

Contact us at 919-694-6116 or welcome@carolinafep.com
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