

Duties of an Appointed Personal Representative

Informal Administration

Once appointed and qualified the power and duties of a personal representative appointed by either informal proceedings or formal proceedings are virtually the same. Letters of Authority for Personal Representative ([PC 572](#)) will be issued by the court or register once the personal representative qualifies by filing an Acceptance of Appointment ([PC 571](#)) and a bond if bond is required.

MCR 5.202(A) provides that letters of authority shall be issued after appointment and qualification of a fiduciary and unless ordered by the court, letters of authority will not have an expiration date. MCR 5.202(B) states that the court may restrict the powers of a fiduciary. Any restrictions imposed must appear on the letters of authority. The court may modify or remove the restrictions with or without a hearing. A register may not impose restrictions in the letters of authority.

MCL 700.3601 contains special provisions to protect a personal representative when there may be estate property which is contaminated. When the personal representative files the statement of acceptance, the personal representative may exclude from the scope of the personal representative's responsibility, for a period of not to exceed 91 days, real estate or an ownership interest in a business if the personal representative reasonably believes the real estate or business is or may be contaminated.

If a personal representative believes that the estate may have a problem with contaminated property, he or she should consult an attorney and follow the advice of the attorney as to how to proceed.

The personal representative is under a duty to settle and distribute the estate "as expeditiously and efficiently as is consistent with the best interests of the estate" and "except as otherwise specified or ordered in regard to a supervised personal representative, without adjudication, order or direction of the court." Essentially, the personal representative engages in unsupervised administration until the estate is completed or until an interested person including a personal representative files a petition in a formal proceeding asking that the court to enter an order to resolve some issue involving the estate. Such independent petitions to the court are authorized by MCL 700.3415. The default method of administration is unsupervised.

Generally, a personal representative must:

- prepare an Inventory
- pay the Inventory fee
- give notice to creditors
- pay the taxes
- pay the bills of the estate and claims against the estate
- distribute the assets as appropriate
- file a Notice of Continuing Administration if the estate is open for more than a year
- file a Sworn Statement to Close the estate once the estate has been fully administered.

There are two important terms that should probably be briefly defined now. **Devisee** is a person designated to receive property in a will. **Heir** is a person who is entitled under the statute of intestate succession to a decedent's property.

Duties of Personal Representative

Notice of Appointment

The personal representative is required to give notice of appointment by MCL 700.3705. This is accomplished by serving interested persons with Notice of Appointment and Duties of Personal Representative ([PC 573](#)). MCR 5.304 additionally requires that the agreement and Notice Regarding Attorney Fees ([PC 576](#)) required by MCR 5.313(D) be served upon the same persons. The rule requires the personal representative to make service not later than **14 days** after appointment. The notices must be served on the following:

1. Decedent's heirs
2. Decedent's devisees, including, if there has been no formal testacy proceeding and if the personal representative is appointed on the assumption that the decedent died intestate, the devisees in a will mentioned in the application for appointment of a personal representative.
3. Trustee of a trust described in MCL 700.7501(1) (this is a trust over which the decedent had a right at his or her death, either alone or with someone else, to revoke the trust and reinvest principal in himself or herself).
4. Michigan Attorney General, Public Administration Division if no known heirs.

If the estate is commenced by an informal proceeding, additionally copies of the Application for Informal Probate and/or Appointment of Personal Representative (Testate/Intestate) [PC 558](#), a copy of the will, if any, and Testimony to Identify Heirs and Devisee Heirs ([PC 565](#)) and Supplemental Testimony to Identify Nonheir Devisees (Testate Estate) ([PC 566](#)) must also be served on the above persons. See MCL 700.3705(1)(d)(i) and MCR 5.107(A). No time is set for service of these documents. It is suggested that they be served at the same time as the Notice of Appointment and Duties of Personal Representative.

If the address or identity of a person to receive notice is unknown, service by publication will be necessary. MCR 5.304(B) prescribes how such publication is accomplished. It provides that the published notice of appointment is sufficient if it includes:

1. Statements that the estate proceedings have been commenced, giving the name and address of the court, and, if applicable, that a will has been admitted to probate.
2. The name of any interested person whose name is known but whose address cannot be ascertained after diligent inquiry and a statement that the result of the administration may be to bar or affect that person's interest in the estate.
3. The name and address of the person appointed personal representative, and the name and address of the court. MCR 5.304(C) and MCR 5.105(A)(3) limit the requirement to serve an interested person by publication to the first such notice.

MCR 5.304(C) provides that after an interested person has once been served by publication, notice of appointment is only required if that person's address is known or becomes known during the proceedings. MCR 5.105.(A)(3) is a general statement of this limitation which applies in other situations where service by publication may be required.

Notice Regarding Attorney Fees

Within **14 days** after the appointment of a personal representative or the retention of an attorney by a personal representative, whichever is later, the personal representative must mail to the interested persons whose interests will be affected by the payment of attorney fees, a notice regarding the attorney fees. [MCR 5.313](#). The form for this notice is Notice Regarding Attorney fees ([PC 576](#)). A

personal representative may make, and an attorney may accept, payments for services and costs, on a periodic basis without prior court approval if prior to the time of payment if notice is given pursuant to the court rule. In all other instances, attorney fees must be approved by the court prior to payment. Costs may be paid without prior court approval. Attorney fees and costs paid without prior court approval remain subject to review by the court.

Notice to Creditors

The personal representative must publish, in a newspaper defined in MCR 2.106(F), in a county in which a resident decedent was domiciled or in which the proceeding as to a non-resident was initiated, a notice to creditors. The notice need only be published once. If the creditor's address is unknown and cannot be ascertained after diligent inquiry, the notice must include the name of the creditor. Publication of notice to creditors may be accomplished by using Notice to Creditors Decedent's Estate ([PC 574](#)). MCR 5.306(A) requires that the notice include:

1. The name, and, if known, last known address, date of death, and date of birth of the decedent.
2. The name and address of the personal representative.
3. The name and address of the court where proceedings are filed.
4. A statement that claims will be forever barred unless presented to the personal representative, or to both the court and the personal representative, within 4 months after publication of the notice.

MCR 5.306(B) requires the personal representative must also serve notice personally or by mail on each known creditor of the estate and the trustee of a trust of which the decedent is settlor, as defined in MCL 700.7501(1) (this is a trust over which the decedent had a right at his or her death, either alone or with someone else, to revoke the trust and reinvest principal in himself or herself). A creditor is known to the personal representative if the personal representative has actual notice of the creditor or the creditor's existence is reasonably ascertainable based on an investigation of the decedent's available records for the 2 years immediately preceding death and the decedent's mail following death. The personal representative must give notice within the 4-month period following publication. However, if the personal representative first learns of the creditor within 28 days of the end of the 4-month period, the personal representative has 28 days from the time the personal representative first knows in which to give notice. Notice to known creditors may be accomplished by using Notice to Known Creditors ([PC 578](#)).

MCR 5.306(C) provides that no notice need be given to creditors in the following situations:

1. The estate has no assets.
2. The estate qualifies and is administered under MCL 700.3982 or MCL 700.3987 (these are sections dealing with summary distribution of small estates).
3. The decedent has been dead for more than 3 years.
4. Notice has been previously been given under MCL 700.7504 in the county where the decedent was domiciled in Michigan (this section deals with the duty of a trustee of a trust described in MCL 700.7501(1) to give notice to creditor of a settlor's estate).
5. Creditors whose claims have been presented and paid.

Notice to Surviving Spouse

In the estate of a decedent who was domiciled in this state at the time of death, the personal representative must serve on the surviving spouse, if any, notice of the rights of election under part 2 of article II of the Estates and Protected Individuals Code and the rights to exempt property and allowances under part 4 of article II of the Estates and Protected Individuals Code.

The notice must be served within **28 days** after the personal representative's appointment. The notice may be accomplished by serving the surviving spouse with Notice to Spouse of Rights of Election and Election and Allowances, Proof of Service, and Election ([PC 581](#)).

No notice need be given the surviving spouse pursuant to MCR 5.305(A) if:

1. The right of election is made before the notice is given.
2. The spouse is the personal representative or one of the personal representatives.
3. There is a waiver of rights and allowances under MCL 700.2202(3).

Inventory

Pursuant to MCL 700.3706 the personal representative is responsible for the preparation of the inventory and service on all presumptive distributees and interested persons who request a copy within **91 days** after the personal representative's appointment.

The property must be listed with reasonable detail along with its fair market value as of the date of death and the type and amount of any lien, mortgage or security interest. The personal representative may employ qualified and disinterested appraisers. The name and address of each appraiser and the item the appraiser valued must be indicated on the inventory. This may be accomplished by using the form entitled Inventory ([PC 577](#)).

There is no requirement that the personal representative file the inventory with the court unless in supervised administration. However, pursuant to MCR 5.307(A) the personal representative must submit to the court information sufficient to compute the inventory fee within 91 days of appointment. The **inventory fee** must be paid before closing the estate or within **one year** after appointment, whichever is earlier.

Change of Address

The personal representative must keep the court and all interested persons informed in writing within **7 days** of any change in the personal representative's address.

Estate (or Inheritance) Tax Information

The personal representative is required to submit to the court proof that no estate (or inheritance) taxes are due or that the estate (or inheritance) taxes have been paid.

Accountings

Pursuant to MCL 700.3703(4) the personal representative must keep each presumptive distributee informed as to the activity of the estate. Until a beneficiary's share is fully distributed, the personal representative shall **annually**, either on the anniversary date of the date his or her letters of authority were issued or on another date the personal representative chooses, prepare a complete itemized accounting of his or her administration of the estate. The itemized accounting must show in detail all income and disbursements and the remaining property, together with the form of the property. This may be accomplished by using Account of Fiduciary ([PC 583](#)) which can be used for most simple estates or Account of Fiduciary ([PC 584](#)) which should be used when you need to report gains or losses for assets. Accountings must be prepared and served on the interested persons in every estate, though they are not required to be filed with the court unless administration is supervised.

When the estate is ready for closing, the personal representative must also prepare a **final accounting** with a description of property remaining in the estate.

Notice of Continued Administration

If the personal representative is unable to complete the administration of the estate within one year of the personal representative's original appointment, the personal representative must file with the court and serve on all interested persons a notice that the estate remains under administration, specifying the reason for the continuation of administration. This may be accomplished by using Notice of Continued Administration ([PC 587](#)).

The personal representative must give this notice within **28 days** of the first anniversary of his or her appointment and all subsequent anniversaries during which the administration remains uncompleted. The Court may administratively close the estate if a Notice of Continued Administration or a Sworn Statement to Close is not timely filed.

Closing the Estate

A personal representative may close an estate by filing with the court, no earlier than **5 months** after the date of appointment, a sworn statement that the personal representative or a previous personal representative has: determined that notice was published and the time for presentation of creditors claims has expired; fully administered the decedent's estate by making payment, settlement, or other disposition of all claims that were presented; sent a copy of the statement to all estate distributees and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected by the administration. The account shall clearly state the amount paid out of the estate in fiduciary fees, attorney fees and other professional fees. [MCL 700.3954](#).

The Sworn Statement to Close ([PC 591](#)) requires that service be made on all interested parties. Once the Sworn Statement to Close has been filed the court must wait **28 days** for any objections to be filed. If no objections are filed the register will sign the Certificate of Completion ([PC 592](#)) and close the estate.

If the personal representative discovers assets belonging to the estate after an estate has been closed and the personal representative has been discharged or one year has expired after a sworn statement was filed, the Court may appoint the original or a successor personal representative upon the petition of an interested person. [MCL 700.3959](#).