

## ITEMS NEEDED TO OPEN AN ESTATE

1. *Certified copy of the death certificate.* If the death certificate is not available, a copy of the obituary or funeral bill may be filed to open the estate, however the certified copy of the death certificate must be filed as soon as possible.
2. *The original Last Will and Testament* (if one exists) and any and all Codicils or Memoranda.
3. *Picture ID* for the person(s) applying to administer estate.
4. Completed *Probate Court Worksheets*. You should retain a copy of the Worksheets for your file.
5. *Filing fees*: the initial filing fee and the advertising fee
  - The initial filing fee for a regular estate is \$25.00 (this is for tentative court fees; additional fees may apply, depending on the size of the estate). The filing fee for a small estate is determined based on the size of the estate (fees range from \$12.50 to \$45.00).
6. Advertising fee (subject to change): \$50.00 check or money order made payable to *The Lancaster News*.
7. *Copy of Deeds for all property located in South Carolina.*
8. *Copy of Titles for all vehicles, mobile homes* (if available).
9. *Paid Funeral Bill Receipt showing zero balance.*



Please accept our sincere condolences on the loss of your loved one. We want to do all that we can to make the probate process as simple as possible for you. Below is some basic information regarding the probate process, and attached to this letter are several documents that we hope will be helpful as you open the estate of your loved one.

### DO I NEED TO OPEN AN ESTATE?

1. **Regular Estate.** If your loved one owned any real property (home, real estate) of any value, or if he/she owned personal property (boat, car, mobile home, jewelry, furniture, etc.) worth *more than \$25,000*, someone will need to open a regular estate.
2. **Small Estate.** If the total value of your loved one's belongings is *less than \$25,000, and if no real property is involved*, someone may file a small estate affidavit.
3. **Estate for Legal Actions.** Even if your loved one *had no belongings*, an estate may need to be opened to take legal action (examples include medical malpractice cases, wrongful death cases).

If there is a will, the will should name who will be responsible for administering the estate (the "Executor" or "Personal Representative"). If there is not a will, South Carolina law determines who is "in line" to handle this responsibility. It is usually, but not always, the same as the person deemed next of kin to the decedent.

Having read this information, take a moment to answer the following questions. They will help you prepare and will direct you to the appropriate information below:

- I will be opening a (circle one)    REGULAR ESTATE    SMALL ESTATE
- If it is a regular estate, is there a will? (circle one)    YES    NO
- If yes, who does the will name as Executor or Personal Representative?
- If there is no will, who is the closest living relative to the decedent?

### WHEN SHOULD I BEGIN?

Many people are eager to start as soon as possible; others are not emotionally prepared to begin this process. We understand that every family differs and do not set strict requirements as to when you must open the estate. Your answers to the first section above should guide you as to the appropriate time frame to begin the process.

- A regular estate should be opened within 30 days from the date of death, if possible. This guideline is used because state law requires that anyone possessing a valid will turn it over to the court within this amount of time. Any will held longer than 10 years becomes invalid. Regardless of whether there was a will, no estate may be opened more than 10 years after the decedent's death.
- The second type of estate, the small estate, applies only to those decedents who owned no real property, and whose entire assets are worth less than \$25,000. A small estate cannot be filed until more than 30 days have passed since the date of death.

### HOW LONG WILL THIS PROCESS TAKE?

Small estates can be opened and closed on the same day. Remember, this procedure applies only when there is no real property, and the total of all personal belongings is less than \$25,000.

Regular estates must remain open until the expiration of the creditor claim period (one year from death or eight months from the date the first notice to creditors is published in the newspaper). Once this period expires and all required documents are filed and assets transferred, an estate may be closed.

## WHAT HAPPENS NEXT?

Our office will be happy to assist you in preparation of the documents necessary to begin the estate. Please complete these worksheets and return them to our office so that we may begin the estate process.

We are happy to answer questions through telephone and email and can handle the paperwork of the estate with you through the mail.

### Regular Estate:

1. Death Certificate, obituary, paid funeral bill receipt (if available);
2. Completed Application for Appointment/Probate of Will (Form 300ES);
3. \$25.00 tentative commissions;
4. Notice to creditors fee (only for decedent whose death was within the last 12 months), payable to *The Lancaster News - if not in Lancaster County, Attorney will advise*);
5. Original Will, if one exists
6. Renunciations/nominations (Form 302ES) signed by anyone with higher or equal priority under the law for serving as Personal Representative;
7. Copy of photo ID of person applying.

### Small Estate:

#### *Without a Will:*

1. Death Certificate, obituary, paid funeral bill receipt (if available);
2. Completed Affidavit for Collection of Personal Property Pursuant to Small Estate Proceedings (Form 420ES) [note: 30 days must have expired from date of decedent's death];
3. Filing fee based on amount of assets (determined by S.C. Code § 8-21-770)

#### *With a Will:*

1. Death Certificate, obituary, paid funeral bill receipt (if available);
2. Completed Affidavit for Collection of Personal Property Pursuant to Small Estate Proceedings (Form 420ES) [note: 30 days must have expired from date of decedent's death];
3. Copy of funeral bill;
4. Filing fee based on amount of assets (determined by S.C. Code § 8-21-770);
5. Original Will;
6. Completed Application for Informal Probate of Will (Form 300ES); \$10.00 fee for probate of will;
7. Completed Information to Heirs and Devisees (305ES);
8. Completed Proof of Delivery (120PC), showing that you delivered Information to Heirs and Devisees.

\* \* \* \* \*

In conclusion, we hope that this has provided a basic introduction into the beginning of the probate process in SC. We look forward to assisting you with your loved one's estate. In the meantime, please know that our sympathy is with you and your family during this difficult time. Should you have any questions or need forms, please contact our office.

## Probate Worksheet

### 1. Please provide the following information about yourself:

Your full name: \_\_\_\_\_

Your mailing address: \_\_\_\_\_

Your physical address (if different from mailing address): \_\_\_\_\_

Your relation to Decedent (person who died): \_\_\_\_\_

Your work telephone number: \_\_\_\_\_

Your home telephone number: \_\_\_\_\_

Your cell phone number: \_\_\_\_\_

Your e-mail address\*: \_\_\_\_\_

*\*Please note that we use e-mail as much as possible to cut down on postage and long-distance charges.*

### 2. Please provide the following information about the Decedent:

His/her full name (including all known names): \_\_\_\_\_

His/her date of birth: \_\_\_\_\_

His/her date of death<sup>1</sup>: \_\_\_\_\_

His/her age at death: \_\_\_\_\_

His/her mailing address: \_\_\_\_\_

### 3. Please answer the following questions about the Decedent:

- Was Decedent a resident of a nursing home, prison, or other residential facility at the time of his/her death?  
 YES  NO. If yes, what was the last address of the Decedent prior to entering the facility?  
\_\_\_\_\_

- Were any children born to Decedent after his/her death?  YES  NO.

If yes, list the name(s), address(es), and date(s) of birth of each child born **AFTER** Decedent died. (Note: The term "children" includes both children born in and out of wedlock.)  
\_\_\_\_\_  
\_\_\_\_\_

- Is it expected that any other children will be born to Decedent after his death?  YES  NO.

If yes, provide details including, but not limited to, the name and address of the mother and estimated month of birth. (Note: The term "children" includes both children born in and out of wedlock.)  
\_\_\_\_\_  
\_\_\_\_\_

- Was the Decedent ever a patient in any non-private hospital or other facility operated by the S. C. Department of Mental Health?  YES  NO.

- Has a guardian or conservator ever been appointed by a court for this person?  YES  NO.

If yes, please explain. \_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> If the decedent died more than ten (10) years ago, you need to discuss this with the Court before you complete the rest of this form as S.C. law prohibits the court from opening an estate for someone who has been dead for more than 10 years except in a few circumstances.

4. **Has any Executor, Administrator, or any other type of Personal Representative been appointed for the estate of this Decedent in this or any other state or county?**  YES  NO.

If yes, please explain. \_\_\_\_\_

5. **To the best of your knowledge, has anyone filed a written "Demand for Notice," demanding that he/she/it be given notice of the appointment of a Personal Representative of this estate?**

YES  NO. If yes, provide details, including but not limited to the names and addresses of the person(s) or entity(ies) making such demands and the court(s) in which the demand(s) is/are filed.

6. **What is your best estimate of the value of the personal estate of the Decedent?** \_\_\_\_\_  
(See Exhibit B for a worksheet to help you make this preliminary estimate.)

7. **What is your best estimate of the value of the Decedent's real estate?** \_\_\_\_\_

8. **Are you seeking appointment as Personal Representative to pursue a lawsuit on behalf of the estate?**

YES  NO. If yes, please provide the name of the attorney assisting with lawsuit: \_\_\_\_\_

9. **At the time of Decedent's death, was he or she involved in any pending civil lawsuit?**  YES  NO.  
If yes, please provide the name of the attorney assisting with lawsuit and explain nature of case:

10. **Did Decedent leave a will?**  YES  NO.

11. Have you made a thorough search for a will and any codicils (a document that amends a will)?  YES  NO.

12. If yes, after the completion of the search, do you have any reason to believe that there may be an unrevoked will and/or codicil of the Decedent that you have been unable to find?  YES  NO.

If yes, please explain: \_\_\_\_\_

If you have not made a complete search, please do so before presenting this form to the Court. Some places you might look include places where Decedent kept important papers or personal effects, a safe deposit box, or at his/her attorney's office.

*If you answered "no" to Question 10, please skip to Question 24.*

13. Does the Will refer to a Memorandum (list disposing of tangible personal property)?  YES  NO.

If yes, please file the Memorandum with the Court if one exists.

14. **Did Decedent get married AFTER signing the Will?**  YES  NO.

If yes, give date of marriage and name of spouse: \_\_\_\_\_

15. **Did he/she have any marriage annulled, get a divorce, or was he/she a party to a valid proceeding concluded by an order purporting to terminate all marital property rights or confirming equitable distribution between spouses AFTER signing the will?**  YES  NO.

If yes, give date of annulment /divorce/court order, name of spouse, and name and location of the court. Provide a copy of the Court Order. \_\_\_\_\_

16. (a) **Were any children born to Decedent AFTER signing the Will?**  YES  NO.

If yes, list the name(s), address(es), and date(s) of birth of each child born **AFTER** the will was signed. (Note: The term "children" includes both children born in and out of wedlock.)





## EXHIBIT B - PROBATE WORKSHEET

If you need additional space for any item, please attach additional sheets.

### A. REAL ESTATE (IN STATE AND OUT OF STATE)\* - Bring copy of deed.

\* For real estate held by joint tenants with right of survivorship, list in Section E below.

Name(s) in Which Property Held	Location of Property (Street, City, State)	# of Acres or Lots in Tract	Number of Buildings on Tract	Tax Map Number	Your Estimate of Value of Tract	Decedent's % of Ownership

### CEMETERY PLOTS (Owned by decedent)

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### B. STOCKS, BONDS (in decedent's name alone or owned by decedent and someone who predeceased decedent)\* - bring photocopies of all stocks and bonds.

\*Remember to include any stocks for Coastal Electric Cooperative, Inc. (\$5.00) and Palmetto Rural Telephone, Inc. (\$10.00). If Decedent owned any stocks or bonds jointly with a right of survivorship please use Section E below.

Names in Which Stock/Bond Held	Description (Company or Series)	Face Amount	Appraised Value on Date of Death	Decedent's % Contribution



**C. CASH, BANK ACCOUNTS\*, NOTES (BEING PAID TO DECEDENT)**

*\*For joint bank accounts with right of survivorship<sup>2</sup>, list in Section E below unless joint owner predeceased this decedent.*

- *Cash on hand at the time of death?*       YES    NO. If yes, amount: \$ \_\_\_\_\_
- *Uncashed/undeposited paycheck?*       YES    NO. If yes, amount: \$ \_\_\_\_\_  
     From: \_\_\_\_\_ Payable to: \_\_\_\_\_
- *Refund checks?*       YES    NO. If yes, amount: \$ \_\_\_\_\_  
     From: \_\_\_\_\_ Payable to: \_\_\_\_\_  
     From: \_\_\_\_\_ Payable to: \_\_\_\_\_
- *Mortgage due to decedent?* (someone paying decedent on mortgage)       YES    NO.  
     If yes, amount: \$ \_\_\_\_\_  
     From: \_\_\_\_\_ Payable to: \_\_\_\_\_
- *Inheritance to be received by decedent?*    YES    NO. If yes, describe:  
     \_\_\_\_\_
- Bank account(s), Certificates of Deposit (CDs), etc. in decedent's name only (or in name of decedent and someone who died before decedent):

Exact Name(s) on Account	Type of Account (checking, savings, CD, etc.) and <u>Last 4 Digits</u> of Account Number	Bank/Company Name	Amount	Value of Decedent's Interest

- *Other (include any benefit checks or other checks or instruments payable to decedent):*  
     \_\_\_\_\_  
     \_\_\_\_\_

<sup>2</sup> An account is presumed to be a right-of-survivorship asset if it is (1) in the name of the decedent "OR" another person; or (2) owned by the decedent and another person as "joint tenants with right of survivorship" or "JTROS;" or (3) is owned by a husband and wife. Presumptions may be overcome by clear and convincing evidence.

**D. PART 1 – INSURANCE PAYABLE TO THE ESTATE** (or payable to a beneficiary who died before decedent):

BENEFICIARY NAME	COMPANY NAME & POLICY NUMBER	VALUE

**PART 2 – INSURANCE PAYABLE TO A LIVING BENEFICIARY – OPTIONAL TO LIST**

BENEFICIARY NAME	COMPANY NAME & POLICY NUMBER	VALUE

**E. JOINTLY OWNED PROPERTY (WITH RIGHT OF SURVIVORSHIP) – OPTIONAL TO LIST**

*Jointly Owned Bank Accounts, Etc. (with Right of Survivorship).*

Exact Names on Account	Type of Account (e.g., checking, savings, CD)	Bank/Company Name	Amount	Value of Decedent's Interest

- *Jointly Owned Real Estate (with Right of Survivorship)* <sup>3</sup> OPTIONAL. Bring copy of deed.

Name(s) in Which Property Held	Location of Property (Street, City, State)	# of Acres or Lots in Tract	# of Buildings on Tract	Tax Map #	Your Estimate of Value of Tract	Decedent's % of Ownership

- *Jointly Owned Stocks and Bonds* - OPTIONAL

Names in Which Stock/Bond Held	Description (Company or Series)	Face Amount	Appraised Value on Date of Death	Decedent's % Contribution

- Other Jointly Owned Property (vehicles, etc.):

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- Any Jointly Owned Property owned with a former spouse:

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**F. MISCELLANEOUS TANGIBLE PERSONAL PROPERTY**

- *Household Goods & Furnishings* (if decedent was not married at time of death) – include brief description and approximate value:

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<sup>3</sup> For real property to be joint with right of survivorship, the deed must have survivorship language, e.g., "to John Doe and Jane Doe and then to the survivor of the two of them." A deed to "John Doe and Jane Doe and their heirs and assigns forever" is NOT joint with survivorship and should be listed in Section A above.

	Exact Name on Title	Year/Model	VIN, if applicable	Value
<i>Vehicles (auto, etc.)</i>				
<i>Boats, motors, and trailers</i>				
<i>Mobile Homes</i>				
<i>Farm Equipment</i>				

	Description	Approximate Value
<i>Business Owned</i>		
<i>Jewelry (of value)</i>		
<i>Collectibles</i>		
<i>Other (list)</i>		

**G. TRANSFERS DURING DECEDENT'S LIFETIME**

List here any of the following types of transfers that Decedent made during his lifetime:

- (1) Any substantial gift made within the last 3 years;
- (2) Any trust which will pay benefits to another after Decedent's death;
- (3) Any transfer of real estate in which Decedent transferred the real estate to another but retained a *life estate*;
- (4) Bank accounts, U.S. Government or corporate stocks or bonds that were in the name of the Decedent but are Payable on Death (or "P.O.D.") to another; or
- (5) Any other transfer which decedent made that was not intended to take effect until his death.

Description of Asset	Transferree(s)/Beneficiary(ies)	Value

**H. POWERS OF APPOINTMENT**

List here any real or personal property over which Decedent held a Power of Appointment. A "power of appointment" is the power to sell, mortgage, encumber, or otherwise exercise rights of ownership over some asset which is the property of another.<sup>4</sup>

- Did Decedent hold a Power of Appointment given by another? \_\_\_\_\_  
If yes, bring a copy of the document creating the Power.
- Did Decedent hold any of the following titles at the time of death?

Guardian (court appointed)? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, for whom? \_\_\_\_\_  
 Custodian? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, for whom? \_\_\_\_\_  
 Conservator? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, for whom? \_\_\_\_\_  
 Trustee? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, for whom? \_\_\_\_\_  
 Estate Representative? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, for whom? \_\_\_\_\_  
 Other? (specify) \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, for whom? \_\_\_\_\_

<sup>4</sup> For example, if John Doe leaves his home to his wife Mary for life (a "life estate"), and at her death the property goes to their daughter Susan, but authorizes Mary to sell or mortgage the property during the lifetime if she believes it's necessary, then the power to sell or mortgage the property is a power of appointment since Mary only owns a life estate in the property and the property is actually the property of daughter Susan.

**I. ANNUITIES AND RETIREMENT ACCOUNTS PAYABLE TO ESTATE** (You must list any owned by decedent and payable to estate; it is your option whether to include any accounts with a named beneficiary)

	Beneficiary Name	Company Name	Value
IRA			
Pension			
401(k)			
Keogh			
Other (describe)			

**J. ENCUMBRANCES** (Mortgages, Liens, Judgments, etc.) (House, Land, Auto, etc.)

Company Name/Lienholder	Description/Asset(s) Encumbered	Balance Due