

ADMINISTRATION OF INTESTATE ESTATES

I. GENERAL

Filed in Probate Court § 43-2-1

All letters testamentary or of administration, general or special, and the bonds given by executors and administrators must be recorded by the Judge of Probate.

II. PETITION FOR LETTERS OF ADMINISTRATION

A. Place of filing § 43-2-40

1. County where decedent was an inhabitant at the time of death
2. County where non-resident decedent leaves assets
3. County where non-resident decedent's assets are brought after death
4. Any county in Alabama where the decedent is a resident and leaves assets; if decedent leaves no assets in county of residence, then after 3 months from death

B. Priority of Grant of Letters of Administration § 43-2-42

1. Spouse
2. Next of kin
3. Largest creditor
4. County or General Administrator - for those counties with population of 400,000 or more
5. Such person as Probate Judge appoints

C. Disqualification of persons to serve as Administrator

1. Under the age of 19
2. Convicted of an infamous crime
3. Incompetent due to intemperance, improvidence or lack of understanding

4. Non-resident of the State of Alabama unless serving as administrator in another state, territory, or jurisdiction
- D. Time for Administration
1. Letters are not to be granted for 5 days after death § 43-2-45
 2. The spouse, next of kin and largest creditor must file for letters within 40 days or they are deemed to waive their priority to administer estate. § 43-2-43
 3. In counties with County or General Administrators, a renunciation by the County or General Administrator may be required to be filed before letters will issue.
 4. Court may grant to anyone of equal standing § 43-2-44
 5. If contested, a special administrator *ad colligendum* may be appointed to collect assets and dispose of perishable goods. § 43-2-47
- E. Notice of appointment of Administrator § 43-2-60
1. Personal representatives must give notice of their appointment. Must state name of decedent, date letters were granted, name of the probate court. Must provide notice to creditors that they must present their claim within time allowed by law or claim will be barred
 2. Publish in a newspaper in the county for 3 successive weeks § 43-2-61. Must be published within 30 days from grant of letters
 3. Actual notice to known and reasonably ascertainable creditors.

III. BOND § 43-2-851

- A. Payable to and approved by Probate Judge
- B. Generally: amount of bond must equal the value of the estate in the personal representative's control plus one year's estimated income (does not include value of real property which cannot be sold without court order).
 - In Jefferson County bond requirement is generally 110% of value of the estate

- Minimum bond is currently \$20,000.00 in Jefferson County

- C. Judge may require additional bond
- D. Any loss will be proportioned to multiple sureties § 43-2-90
- E. Sureties are jointly and severally liable with personal representative § 43-2-852.

IV. COUNTY OR GENERAL ADMINISTRATORS

- A. Every Probate Judge must appoint a general administrator for cases in which no person entitled to administer the estate makes application. § 43-2-170
- B. Office expires with the term of the Probate Judge
- C. In counties with population exceeding 400,000 County Administrator has 4th priority to administer estate
- D. Renunciation of County Administrator required after 40 days in Jefferson County
 - 1. Requests and procedure to obtain same
- E. Requests for County Administrator to administer estates.

V. INVENTORY OF ESTATE § 43-2-835

- A. Inventory filed within 2 months after appointment
- B. With reasonable detail and indicating the fair market value of property at time of death
- C. Identify type and amount of any encumbrance
- D. Personal representative must send a copy of the inventory to interested persons who request it
- E. Make supplemental inventories if values change § 43-2-836.

VI. EXEMPTIONS AND ALLOWANCES

A. HOMESTEAD ALLOWANCE § 43-8-110

1. Surviving spouse of a decedent who dies domiciled in Alabama is entitled to a homestead allowance of \$15,000.00.
2. If there is no surviving spouse, each minor child and each dependent of the decedent is entitled to homestead allowance of \$15,000.00 divided amongst them.
3. Exempt from all claims
4. Is in addition to share passing by will or intestacy or by way of the surviving spouse's elective share
5. Can be drawn from personal property or realty

B. EXEMPT PROPERTY § 43-8-111

1. Surviving Spouse of a decedent dies domiciled in Alabama at time of death is entitled to receive property of a value not exceeding \$7,500.00.
2. If no surviving spouse, children (including independent adults) of the decedent are entitled jointly to property of a value not exceeding \$7,500.00.
3. Is in addition to share passing by will or intestacy or by way of the surviving spouse's elective share.
4. Exempt from all claims

C. FAMILY ALLOWANCE § 43-8-112 & § 43-8-113

1. Surviving spouse and minor children of a decedent domiciled in Alabama at the time of death are entitled to a reasonable allowance out of the estate for their maintenance during the administration.
2. Minor children must be ones decedent was obligated to and was in fact supporting
3. \$15,000.00 lump sum or periodic installments not exceeding \$500 per month

4. Paid to surviving spouse if she is living, otherwise to children or the persons caring for them
5. If children of decedent do not live with surviving spouse, allowance can be allocated according to need.
6. Exempt from all claims except homestead
7. Ends at death of person entitled to it.

VII. CLAIMS

- A. Alabama's statute of non-claims provides that claims must be presented within 6 months of granting of letters or within 5 months of date of first publication of notice. Any creditor entitled to actual notice must be allowed 30 days from receipt of notice to present their claim. § 43-2-350
- B. Claims which are perfected liens against land or personalty need not be filed to reclaim property. § 43-2-350
- C. Presentation of claim must be made by filing a verified claim in the office of the Judge of Probate from which letters issued. § 43-2-352
- D. Any objections to a claim (in whole or in part) must be presented by the personal representative by giving written notice to the claimant. On application of the personal representative or the claimant the court must give 10 days notice of a hearing to resolve the dispute. § 43-2-354

VIII. PREFERENCE OF PAYMENT OF CLAIMS § 43-2-371

- A. Funeral expenses
- B. Fees and charges of administration
- C. Expenses of last sickness
- D. Taxes assessed on estate of the decedent prior to death
- E. Debts due to employees, as such, for services rendered the year of the death of the decedent

F. Other debts of the decedent.

IX. TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVE § 43-2-843 & § 43-2-844

A. **Without** court authorization the personal representative may:

1. Retain assets
2. Receive assets
3. Perform deceased contracts
4. Satisfy written charitable pledges
5. Deposit funds in financial institutions if not needed for debts or expenses currently payable
6. Abandon valueless personal property
7. Allocate expenses to income
8. Pay calls, assessments and other sums accruing against or on account of securities
9. Hold securities
10. Insure assets
11. Borrow to protect estate
12. Settle with debtors
13. Settle and satisfy claims
14. Pay taxes and expenses
15. Sell or exercise stock options
16. Enter leases up to one year
17. Vote stocks

18. Employ attorneys, auditors, appraisers, accountants to advise or assist the personal representative in the performance of administrative duties, employ an agent to perform any act of administration
19. Prosecute or defend claims for the protection or benefit of the estate
20. Continue unincorporated business
21. Incorporate the business decedent was engaged in at the time of death
22. Limit personal liability of the personal representative in any contract entered into on behalf of the estate

[Court may limit powers of personal representative]

B. **With prior court authorization** the personal representative may:

1. Acquire or dispose of an asset including land or abandon an estate asset
2. Make repairs or demolish improvements
3. Subdivide, develop or dedicate land to public use
4. Leases greater than one year
5. Enter into leases or arrangements for exploration and removal of minerals and other natural resources
6. Sell, mortgage or lease real or personal property of the estate or interest therein for cash, credit or a mix
7. Pay compensation of the personal representative.

X. SALE OF PERSONAL PROPERTY

A. By court order § 43-2-410

1. To pay debts
2. Make distributions

3. Prevent waste or destruction of property liable to waste or of a perishable nature if it is proved that sale would benefit the estate
- B. Notice of sale § 43-2-413
1. Given for 3 weeks and includes:
 - a. Day
 - b. Place
 - c. Terms
 - d. Description of property to be sold
 2. *Unless* property is perishable
 - a. Then can be sold after 5 days notice after one publication
- C. Time of sale § 43-2-414
1. Between 11:00 a.m. and 4:00 p.m.
- D. Sale is for cash not credit unless approved by court and on conditions § 43-2-415

XI. REAL ESTATE

A. RENTAL

1. Real estate may be rented by the personal representative at public auction or privately. If rental is private, must report to the court within 30 days. § 43-2-440

Note the conflict between § 43-2-440 and § 43-2-843 (15) of the Probate Procedures Act which allows leases for terms not exceeding one year without court approval

B. SALE

1. By approval of the court in 2 instances:
 - a. May hold sale for division when not able to divide estate § 43-2-443
 - b. Sale for payment of debts § 43-2-441

2. Procedure:
 - a. File a petition verified by affidavit of personal representative which includes:
 - i. Description of the property,
 - ii. Listing of all heirs stating their name, residence, mental status and whether they are under the age of 19
 - iii. Grounds for sale
 - b. Hearing 30 days or more after filing petition
 - c. Guardian *ad litem* appointed for minor and incompetents § 43-2-445
 - d. Notice to resident heirs 10 days before hearing
 - e. If sale is for payment of debts, notice by publication once a week for 3 consecutive weeks § 43-2-445
 - f. Notice to non-resident heirs by publication once a week for 3 consecutive weeks § 43-2-446
 - g. Unknown heirs receive notice by publication, guardian *ad litem* appointed to protect their interests, their share paid into court until their identities are ascertained § 43-2-447
3. Court may order on such terms as court directs; sale on credit may not exceed 2 years
4. Notice of sale in paper once a week for 3 consecutive weeks in the county in which the land is located § 43-2-455
5. Sale in county where land is located, as the court directs, or if land is in 2 counties, in each county
6. Report of sale within 30 days of sale § 43-2-459
7. Order confirming the sale of real estate after 10 days from filing the report § 43-2-462.

XII. COMPENSATION OF PERSONAL REPRESENTATIVE § 43-2-848

- A. Entitled to reasonable compensation not to exceed 2 ½% on receipts and 2 ½% disbursements based on the following factors:
 - 1. Novelty and difficulty of the process
 - 2. Skill
 - 3. Likelihood to preclude other employment
 - 4. Fee customarily charged
 - 5. Amount involved and results obtained
 - 6. Requirements imposed by the circumstances and condition of the estate
 - 7. Nature and length of professional relationship with decedent
 - 8. Experience, reputation, diligence and ability
 - 9. Liability financial and otherwise of the personal representative and risk and responsibility
- B. In addition, the court may allow a reasonable compensation for extraordinary services performed for the estate
- C. This statute does not limit the ability of beneficiaries to reach an agreement regarding the amount or method of the personal representative's compensation.
- D. May renounce all or a part of compensation.

XIII. ATTORNEYS FEE

- A. Personal representative may employ attorneys § 43-2-843(17)
- B. An interested person may ask the court to approve the reasonableness of the fee § 43-2-850
- C. Excessive fees may be ordered refunded § 43-2-850.

XIV. INTESTATE SUCCESSION § 43-8-41 - § 43-8 -44

- A. Share of surviving spouse
 - 1. 100% to surviving spouse if no surviving issue or parent
 - 2. Children survive with spouse who is parent § 43-8-41(3)
 - a. First \$50,000 to surviving spouse
 - b. Balance $\frac{1}{2}$ to spouse, $\frac{1}{2}$ to children to divide equally.
 - 3. Children survive with spouse who is not their parent § 43-8-41(4)
 - a. $\frac{1}{2}$ to spouse
 - b. $\frac{1}{2}$ to children to divide equally
 - 4. No children but parent surviving § 43-8-41(2)
 - a. First \$100,000 to surviving spouse
 - b. Balance $\frac{1}{2}$ to surviving spouse, $\frac{1}{2}$ to parent or parents
- B. No surviving spouse:
 - 1. Issue
 - 2. Parent or parents
 - 3. Brothers and sisters or their issue by representation
 - 4. Grandparents or their issue by representation $\frac{1}{2}$ to maternal and $\frac{1}{2}$ to paternal
 - 5. State of Alabama through escheat
 - 6. Heir must survive for 5 days to inherit.

XV. RESIGNATION OF ADMINISTRATOR

- A. In writing filed with court § 43-2-270
- B. Death of the personal representative, new one is appointed § 43-2-272.

XVI. LAST PAYCHECK § 43-8-115

Wages of an employee who dies intestate may be paid to the surviving spouse or person having legal custody of minor children. Money paid out shall be considered as part of the exempt property under § 43-8-111 and excess over \$3,500 will be considered a part of the family allowance.

XVII. DISCLAIMER OF PROPERTY INTEREST § 43-8-291

Any beneficiary may disclaim in whole or in part property to which he is entitled. Such renunciation must be in writing describing the property or interest disclaimed and filed within 9 months after death. The effect will be as if the property never passed to the disclaimant's estate.