Multnomah County Circuit Court Probate Department

FAQ

- **Do I have to get a lawyer?**

  Generally speaking, these matters are complex and require knowledge of many different rules, including Oregon statutes and case law, uniform and local court rules, banking, tax, fiduciary responsibility and so forth. Multnomah County Supplemental Local Rule 9.085 requires you to give the court notice if you intend to proceed without a lawyer, and you must give proof of your competency in probate matters. You will be scheduled to meet with a judge who will make that determination. If you can not clearly explain your understanding of the steps required to complete the case, you will likely be required to retain a lawyer or be removed as fiduciary. A link to referral sources for low cost legal providers is elsewhere on this page.

  There are some simple probate matters that you may do without a lawyer, but it is always a good thing to consult with one. For example, you do not have to have a lawyer to do a Small Estate Affidavit or to apply to be the Guardian of a child. Again, these "simple" matters may be more complex than you anticipate, so if you have any questions about your rights in the matter you should consult with a lawyer. Court Staff are not allowed to give you legal advice.

- **Do I have to file a probate case?**

  Again, Court Staff are not allowed to give legal advice. Every case is specific to the facts involved. If you have questions about your rights in any matter, you should consult with a lawyer. Here is a link to referral sources: *https://www.osbar.org/ris*

- **The bank told me to get letters testamentary. How do I get letters?**

  Letters Testamentary or Letters of Administration are issued by the Court once the Court has appointed you the Personal Representative of the estate. Even if you are named in a will as the personal representative, you are not the Personal Representative of the Estate until you are appointed by a court. You must start a probate case by filing a petition and giving notice to those entitled to notice. The Court will not issue letters with a Small Estate Affidavit because there is no appointment made in that instance.

- **Where do I get forms for probate?**

  The Court provides a very limited number of forms: Small Estate Affidavit, Minor Guardianship, Guardian's report, and Acknowledgment of Restricted Assets. These forms are available at the Courthouse and on this website. The court does not offer or provide any other probate forms. You should consult with a lawyer whenever you are considering filing a probate case. You may find other resources on the website of the Oregon State Bar: *https://www.osbar.org/ris*

- **How do I serve the parties in minor GRD?**

  The child's parents, and the child if he/she is 14 or older must be personally served with notice, a copy of the petition, and an objection form. Service may be done by someone who is not a party to the case, is over 18 years old, and lives in the same state as the person being served. The person who serves the papers must sign an affidavit saying when, where, and to whom they gave the documents. Please remember that you must give notice to all people entitled to notice before you will be appointed.

- **Why do I have to personally serve the child's father when he has no relationship with the child and/or doesn't support the child?**
  The law requires that both parents of a minor child be served before the court can grant the guardianship.

- **I was told to file or register my Power Of Attorney with the Court.**
  The Court does not have Power Of Attorney forms and you cannot file or "register" them here. It is a good idea to consult a lawyer before signing any Power Of Attorney.

- **Why can't I take an order or judgment to ex parte?**
  All probate matters must be reviewed by court staff before they are submitted to the judges. Most require extensive review that cannot be done in an ex parte setting. If you submit your orders to the probate department they will be processed quickly. All probate ex parte must be prescheduled before it occurs. *SLR 9.025*

- **How long before my order/judgment will be signed?**
  As with all court matters, the answer to this question depends on the work load of the Court. Most orders or judgments are reviewed and signed within a week. Some matters may be expedited if there is an emergency.

- **How and when can I do a partial distribution?**
  Estate assets cannot be distributed without Court approval. The Court will not approve distributions from the estate until after:
  - 4 months from the first publishing date.
  - The required notice to heirs, devisees, and State agencies (DHS) has been given
  - An affidavit of compliance (search for creditors) has been filed
  - Notice and time to object to the distribution has been given to heirs and devisees.

- **Can I get the original will back?**
  No. All documents once filed with the court cannot be returned. The Court will safeguard the original will and copies are available upon request.

- **What is a Small Estate?**
  A small estate affidavit is an alternative to filing a probate case. It is limited to cases where the assets are under $275,000. The fair market value of real property (land or house) cannot exceed $200,000 and everything else must be less than $75,000. You must wait 30 days after death. The original will and a certified death certificate must be included. You will not receive letters testamentary.

- **How can I learn more about how to be a good guardian, conservator, personal representative or trustee?**
  In all cases filed after July 15, 2014, all non-professional guardians and conservators are required to complete a class we are calling "Fiduciary 101." If your case is older than that and you do not properly fulfill your duties, the Court may require you to take the class, in addition to any other sanctions imposed. After Febuary 2015, this requirement will be in effect for all types of cases. More information about the class is found here: *guardianpartners.org/oregon-fiduciary-101/*