

Administration of Small, Uncontested, Decedent Estates
In Cook County, Illinois,
In 2021

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SPONSORED BY: The Probate Court Assistance Project (PCAP) of Chicago Volunteer Legal Services (CVLS)! While this seminar provides a foundational understanding of Decedent Estates, we learn best by **doing!** The PCAP program provides the *pro bono* opportunity to get real world experience while receiving first class mentoring from other CVLS volunteers or staff. Are you serious about Decedent Estates? If so, contact our PCAP czar, Rich Campbell at rcampbell@mayerbrown.com.

About the Presenter

Steve Raminiak concentrates his practice in estate planning as well as the administration of estates and trusts of decedents, minors and disabled persons. He regularly tackles contested estates, and has been appointed as Guardian *ad Litem*, Special Administrator, and as counsel for disabled persons by Judges in the Probate Division of the Circuit Court of Cook County. Steve excels at developing estate plans involving blended families, non-traditional relationships and disabled persons. He also advises business entities in regards to succession planning, tax planning and corporate governance issues.

Additionally, Steve regularly donates his time to those with financial hardships, particularly through his association with Chicago Volunteer Legal Services (CVLS). CVLS is the largest pro bono legal service provider in Illinois. Every year, they match volunteer attorneys with thousands of tough cases that no one else will take. Steve presently serves as a volunteer Guardian *ad Litem*, as a lecturer on Probate matters at free CVLS seminars, and as a senior resource for volunteer attorneys. Steve also served as CVLS' President from 2016 to 2018, and on their Board of Directors from 2012 to 2020.

Steve is a long-standing member of the Advocates Society, an association of Polish lawyers and Judges. Steve created their first website in 2001, and volunteered as their webmaster from 2001 to 2010.

Steve has always resided in the Chicagoland area, and grew up in Norwood Park. Steve's father, Bob Raminiak, has been a principal of the accounting firm of Raminiak, Piper and Company since 1973. Steve married Meg in 2003, and they are raising two children, Flynn and Tillie.

Education

Juris Doctor, Chicago-Kent College of Law, 2004

Bachelor of Arts, University of Illinois at Chicago, 1996

Associations

Chicago Volunteer Legal Services

Advocates Society

Illinois State Bar Association

What is a Small, Uncontested, Decedent Estate In Cook County, Illinois?

- SMALL: All assets are clearly under \$800,000, but not insolvent.
- UNCONTESTED: No anticipated fights from ANYONE for ANY REASON (incl. caregivers, creditors, litigants in related matters). Independent, NOT Supervised Administration. No expected disclaimers from heirs or legatees.
- DECEDENT: Not minors or disabled persons.
- ESTATE: Not an Estate that pours assets into a Trust.
- COOK COUNTY: When in Rome, do as the Romans do.

This one hour presentation is not comprehensive on all facets of administration. This is an introduction to its most basic aspects. Please consult other resources, as appropriate.

The Probate Court of Cook County has a strict policy about legal counsel. This Court will never allow an Executor or Administrator (i.e., a “Representative”) to be appointed without an attorney. In fact, this position was recently affirmed on appeal in the matter of In re Estate of Carol Mattson, deceased, 2019 IL App (1st) 180805 (1st Dist., 2019).

Similarly, this Probate Court will never allow the Representative of a Decedent’s Estate to be without an attorney at any time. In general, a Representative’s attorney will not be allowed to withdraw unless another attorney substitutes in – even if s/he took the matter *pro bono*. Be especially cognizant of this in your first meetings with your client.

However, keep in mind, if you are a PCAP volunteer who needs support, we are certainly happy to assist, and we can substitute another volunteer for you if that is ever necessary.

If you are allowed to withdraw from representing an Administrator or Executor, then within 30 days of your withdrawal, you must file a fee petition for all of your fees and costs. The Court may extend this time if you file a motion that requests such an extension within the aforementioned 30 day period. See 755 ILCS 5/27-2 (b).

If matters become complex, feel free to call me for suggestions.

I. Intake

At minimum, you need the following.

Your Client and The Deceased

- Copy of Decedent's Death Certificate, which will inform you of: the Decedent's Name, Dates of Birth and Death, Social Security Number, Address of Decedent's Primary Residence at death, and where the Decedent died (City/State)
- Is there a Will? Has it been filed?
- Who does the client want to be the Representative?
- Client's and Proposed Representative's: Name, Address, Telephone Numbers, E-mail, Vocation, Relationship to Decedent
- Proposed Representative's: Social Security Number, Date of Birth
- Does the Proposed Representative meet statutory criteria? (1) over 18, (2) U.S. resident, (3) sound mind, (4) not adjudged disabled, (5) never convicted of a felony.

If the client would like to provide you with his work email address, warn that, by doing so, the client may be sacrificing attorney-client privilege as to all email correspondence.

Financials (for example)

- Real Estate
- Checking & Savings Accounts
- Stocks, Bonds, Money Market Accounts, Mutual Funds
- Retirement Plans, Profit Sharing
- Life Insurance (Whole or Term)
- Interest in Business/Partnership
- Prepaid burial plan
- Liabilities (associated with assets or otherwise)
- Has the Decedent guaranteed debts of another?
- Are there any restrictions on any of these assets?
- Are any of these assets in Trust?
- Are there any guns or firearms and, if so, does your proposed representative have a FOID card?
- Total approximate real property (independent of liabilities) subject to probate
- Total approximate annual gross income for real property subject to probate
- Total approximate personal property (independent of liabilities) subject to probate

Consider Whether to Wait for Two Years to Pass After Date of Death

Claims which could have been brought in Probate Court are generally barred after the two year anniversary of the Decedent's death. See 755 ILCS 5/18-12. Keep in mind that mortgages are attached to real property and are generally unaffected by this. Also, due to the Supremacy Clause, this does not apply to debts owed to the Federal government. Still, consider whether it would be best to refrain from taking any action regarding the Estate if (a) the Decedent has other extraordinary debts or liabilities, or (b) most of the two year period has already passed.

People

- Names/addresses of Legatees and Heirs (See 755 ILCS 5/2 for guidance)
- Names and approximate dates of death (or divorce) of those who would have been Heirs if they survived the Decedent (or still been married)
- Are any Legatees, Heirs or creditors contentious/hostile?
- Are any Legatees or Heirs disabled or under the age of majority?
- Marital status of certain Heirs' parents when such Heirs were born/adopted (e.g. for children of Decedent)

Advise Your Client Regarding Social Security Payments

If the Decedent was receiving Social Security, direct your client to promptly notify Social Security of the death by calling 800-772-1213. Also...

- If monthly benefits were being paid via direct deposit, notify the bank or other financial institution of the beneficiary's death. Request that any funds received for the month of death and later be returned to Social Security.
- If benefits were being paid by check, do not cash any checks received for the month in which the Decedent died or thereafter. Return the checks to Social Security.
- Benefits for survivors can be paid to certain family members, including the beneficiary's widow or widower, dependent children and dependent parents. For guidance, see: <http://www.socialsecurity.gov/survivors/>

Is There a Charitable Bequest in Excess of \$4,000.00 (i.e. a gift to a charity that is over \$4,000.00)? If so, notify the Illinois Attorney General Charitable Trust Bureau, whose website is presently: <https://illinoisattorneygeneral.gov/charities/index.html>.

II. Is this trip really necessary?

In general, Probate Courts consider assets which are left in the Decedent's name after s/he passes away. Usually, assets left to others by joint tenancy with right of survivorship or beneficiary designation are not subject to a Probate Estate.

If the Decedent possessed no real property, and the gross value of the Decedent's entire personal estate does not exceed \$100,000, then a probate is probably unnecessary and a small estate affidavit can be used. Use Cook County Form CCP N608, or if the title of a car is involved, use the form suggested by the Secretary of State (which is available at <https://www.cyberdriveillinois.com/publications/motorist/titlereg.html>).

If the Decedent possessed real property of a limited value, and if the family members want to sell that, consider enlisting a title company as an alternative to Probate. The cost of title insurance may be significantly less than the cost of Probate.

III. Who is the Representative? Do you represent him/her?

An Intestate Estate is an Estate in which the Decedent **left no Will**.

A Testate Estate is an Estate in which the Decedent **left a Will**.

In Intestate Estates, or in Testate Estates where no named Executor is willing or able to act, consider which persons have priority per statute. See 755 ILCS 5/9-1 & 3 for guidance.

In Testate Estates, if a first named Executor is living and competent but declines to act, have that person sign a "Declination of Office" (Cook County Form: CCP 309). While the Court does not require that this document be notarized, I recommend it.

In Testate Estates, if a first named Executor is not living or has been adjudicated to be disabled, I encourage you to attach a death certificate or Letters of Office as an Exhibit to your initial Petition, but redact any social security number or date of birth from that Exhibit. Some Judges may find that to be unnecessary, but that also shows a level of diligence that I think all Judges would appreciate.

IV. Initial Filings

Filing a Will in Cook County

A person who is named Executor under the Will must file the originally signed Will within 30 days of receiving notice of learning that s/he has been named Executor, if s/he has said originally signed Will in his possession.

- **WHERE TO GO:** 12th Floor of the Daley Center – to the “Wills” counter on the West side of building.
- **WHAT TO KNOW:** Information provided by the Will plus the Decedent’s date of death. (Will cannot be filed without providing the date of death.)
- **CHARGES:** No charge to file the Will. However, have a check ready to pay for as many certified copies of the Will as you will need. I strongly recommend that you purchase at least one certified copy.

Choosing a Petition

In Intestate Estates, use CCP 302: Petition for Letters of Administration.

In Testate Estates where a named Executor wishes to act, use CCP 315: Petition For Probate Of Will And For Letters Testamentary.

In Testate Estates where no named Executor wishes to act, use CCP 316: Petition For Probate Of Will And For Letters Of Administration With Will Annexed.

The Petition should list the value of assets, *independent of liabilities*.

If this is a Probate Court Assistance Project (PCAP) case...

- Prepare CCP N642: Rule 298 Certification for Waiver of Fees, Representation by Civil Legal Services Provider or Court-Sponsored Pro Bono Program. *See sample in the Appendix.*
- File that Certification with your initial Petition, but be sure to follow CVLS guidelines for e-filing, which can be found at CVLS.org/efile.

CVLS cannot reimburse volunteers for fees that are eligible to be waived using a Certification. Therefore, it is imperative that you follow e-filing instructions closely.

CVLS cannot reimburse for third party vendor fees, and a Certification does not waive third party e-filing vendor fees. Thus, we urge you to use a free e-filing vendor such as Odyssey eFileIL.

If this is NOT a PCAP case, then use standard electronic filing procedures to file the Petition, pay all fees, and obtain a date to open the Estate.

For efficiency's sake, I strongly recommend that you prepare all initial pleadings described in Sections IV, V and VI, herein, in one sitting. Be sure to reference the same people in the same order in multiple documents (i.e., Exhibit "A" of Petition, Affidavit of Heirship, Order Declaring Heirship). By adopting this approach, you appear more organized and the Court can review your pleadings more quickly.

General Court Orders, Including Pandemic Protocols

Also, please note, all General Court Orders which apply to all matters due to the pandemic or otherwise can be found at <http://www.cookcountycourt.org/ABOUT-THE-COURT/County-Department/Probate-Division>. In particular, on the COVID-19 Emergency Procedures tab, you will find (a) the Amended General Administrative Order 2020-P-08, which discusses how to approach certain matters via videoconference, and (b) the Instructions for Probate Division Virtual Hearings, which should be attached to any Notice sent in this matter, as noted below. However, please note, the Rule 298 (fee waiver) instructions found on that website do not apply to the PCAP program.

V. Notice Prior to Court Date to Open Estate

If the Estate is Intestate, or Testate but no named Executor will act, you must give notice to all persons listed on the Petition's Exhibit "A" at least 30 days prior to the initial Court date to open the Estate.

If a named Executor will act pursuant to a Will, notice of the initial hearing is unnecessary if any and all prior named Executors are deceased, adjudicated disabled, or have signed a "Declination of Office."

Methods of Giving Notice

- Waiver of Notice. Use Cook County Form CCP 303.
- Mailing of Notice. The relevant Cook County Form, CCP 1004, is outdated because of the pandemic and because it does not advise as to e-filing or to instructions as to Court attendance via videoconference. Thus, I recommend sending a more general Notice and CCP 1004, along with the Probate Court's instructions as to attendance if the Courts are closed due to the pandemic. A sample of a more general notice (to be sent with CCP 1004 and attendance instructions) can be found in the Appendix. These documents must be mailed with a copy of the Petition to all heirs entitled either to administer or to nominate a person to administer equally with or in preference to the petitioner at least 30 days before hearing.

Cook County Rule 12.3 (e) provides, “If it appears that Decedent was at the time of the death a citizen of a foreign country, or that any heir or legatee is a citizen of a foreign country, notice shall be given to the nearest consul or consular agent for the foreign country who is listed by the Department of State in the manner provided by (5/6-10 or 5/9-5), as the case may be.” Check here for relevant contact information: <https://travel.state.gov/content/travel/en/consularnotification/ConsularNotificationandAccess.html>.

If you are uncertain as to the identity or location of any heir or legatee, notice should be given to the State’s Attorney, whose current address is: Cook County State's Attorney's Office, Richard J. Daley Center, Room 500, 50 W. Washington, Chicago, IL 60602. Call (312) 603-5440 to confirm this address prior to sending. Be sure to contact the State’s Attorney at least a week before the hearing to provide them with certain documents and answer any questions.

VI. Hearing on Petition to Open an Estate

Minimum Documents to Bring to Court (or Provide via Email When Courts are Closed)

* If applicable.

CCP 302, 315, or 316: Initial Petition
CCP 317: “Copy of Will” form (with Will attached)*
Affidavit of Heirship
CCP 303: Waiver of Notice*
Mailed Notice* (see above)
CCP 312 or 313: Bond
CCP 305: Order Declaring Heirship
CCP 309: Declination of Office*
CCP 307: Acceptance of Office of Personal Fiduciary*
Order for Publication (PCAP matters only)* <i>See sample in the Appendix.</i>
CCP 314 or 319: Order Appointing (<i>if independent administration, strike the paragraphs requiring an “inventory” and an “account”</i>)

Be sure to e-file all documents which will not require a Judge’s stamp well in advance of the next Court date. At present, due to the pandemic, we are emailing courtesy copies to the Judge. Be sure to follow the Court’s instructions closely and endeavor to only send items which have been previously e-filed, as applicable. Describe your courtesy copies in an email or cover letter to the Judge in precisely the same order that they are mentioned on the Amended General Administrative Order 2020-P-08. Your Judge will appreciate it, and may waive your appearance.

ROOKIE MISTAKE: Your courtesy copies should always include a message that references the date of the next Court appearance. In particular, during the pandemic, it is critical that you include the next Court date in the subject line of your email. Failure to do so may result in an unhappy Judge, or a continuance!

ROOKIE MISTAKE (DURING A PANDEMIC): While Court is held remotely, your proposed Order must always include your email address! A Probate Judge recently told me that Judges and staff in the Division are working very hard, including on weekends and holidays, to move cases forward. It can take substantial time to trace the attorney to a viable email address. Please be considerate about this!

Bond

If the Will does not waive Bond, or if the Estate is intestate, you must present a “Surety” Bond. Use Cook County Form CCP 312. The bondsmen collectively monitor this phone number in the morning and sometimes into the early afternoon: (312) 603-5420. Your bondsman will likely require, at least, a copy of the Petition and a completed application that is signed by your client. Ask the bondsman for an application and coordinate as s/he requests. Once the Court resumes in person appearances (i.e., after the pandemic has safely passed), if you need a Surety Bond, you will likely visit with the bondsmen in the hallway on the 12th floor of the Daley Center in order to get a certified Surety Bond right before you appear at Court.

A Surety Bond is calculated at 150% of only the personal property in the Estate, but the Court will increase this figure when considering rental income. For example, if the Petition approximates real property at \$400,000.00, personal property at \$100,000.00 and annual income from real estate at \$10,000.00, then the Surety Bond amount will be \$165,000.00.

In my experience, the annual premium for the Surety Bond is usually about 0.75% of the amount covered. If you have no prior relationship with a bondsman, you may be required to pay this premium up front (i.e., before the bondsman will issue a Surety Bond).

If the Will waives Bond and your Executor resides in Illinois, you will still need a Bond... a “No Surety” Bond to be precise. Use Cook County Form CCP 313.

Affidavit of Heirship

Your Affidavit of Heirship must state facts (e.g., the Decedent had two children born to her during her lifetime) and NOT conclusions (e.g., the Decedent had two heirs, being her two children). The Court will reject the latter. At minimum, you must state:

- how many times the Decedent married or entered into a civil union, when each marriage or union ended and the name of each spouse/partner, and
- how many children were born to or adopted by the Decedent during any marriage or civil union or otherwise, the name of each child, and which of those children predeceased the Decedent and when that occurred.

If a child was born to a male Decedent outside of a marriage or civil union, attach clear and convincing evidence of paternity as an Exhibit (e.g., birth certificate that references the Decedent as father), but be sure to redact all social security numbers and dates of birth.

If a child of the Decedent predeceased, describe said child's descendants as you would for the Decedent. If the Decedent died without living descendants or a spouse/partner, you must ascend a level to the Decedent's parents.

For further clarification, see the Appendix, where you will find two models that I drafted, and three models which the Court sometimes provides to attorneys as a courtesy.

Designation of Personal Fiduciary

If a beneficiary is a minor or a disabled person, a personal fiduciary must be designated for that beneficiary. If it seems as if a parent of a minor child will not be that child's Personal Fiduciary, consider giving notice of the Designation to that child's parents and all other heirs and legatees.

VII. After Appointment

I strongly recommend that you publish and mail notice right after appointment.

ALL NOTICE MUST BE MAILED AND PUBLISHED NOT MORE THAN 14 DAYS AFTER THE ORDER APPOINTING IS ENTERED. Failure to do so carries serious consequences. See 755 ILCS 5/9-5, 9-10, 6-10, 6-11, and 18-3.

Publish Notice of Appointment, or of Denial of a Will, to All Unknown Heirs, Legatees, or Creditors

Publication to unknown heirs, legatees, and creditors must be made once a week for three (3) successive weeks in a newspaper published in the county where the Order was entered.

If you are not a PCAP volunteer, then, absent a pandemic, you can arrange this with the Chicago Daily Law Bulletin in the Daley Center on the 8th Floor right after your Court appearance, if you so desire. In any event, you can access that same resource online at <https://publicnoticenetwork.net/lbpcLogin/home>.

If you are a PCAP volunteer, then use that same online resource, i.e., <https://publicnoticenetwork.net/lbpcLogin/home>, but upload the entered Order for Publication when you are prompted as to payment or provide the entered Order directly to the Law Bulletin agent on the 8th Floor of the Daley Center. Again, CVLS cannot reimburse volunteers for charges that are eligible to be paid by the Cook County Court. Thus, it is imperative that you follow instructions closely.

In most circumstances, you should not publish notice to unknown creditors if the Decedent died over 1½ years prior to appointment. Again, most claims against the Estate are barred after 2 years. See 755 ILCS 5/18-12.

Mail Notice to Known Heirs and Legatees

Mail the following items to all known heirs, legatees (and consular agent and State's attorney, if necessary, as explained above):

- **CCP 1003**: Notice of Rights in Independent Administration (and Petition to Terminate)
- **CCP 302, 315 or 316**: file-stamped Petition
- **CCP 314 or 319**: Court-entered Order Appointing
- **AND, IF TESTATE:**
 - **CCP 1020 or 1021**: Notice to Heirs/Legatees, Will Admitted/Denied
 - Copy of the Will

Although I know that you will never overlook this requirement, several persons have found a previous version of this presentation online and then asked me what to do if they fail to send notice to heirs and legatees, as required.

First, try to cure that error by asking all heirs and legatees to sign a Waiver of Notice. See CCP 303. Simply present all Waivers with all other closing documents when you close the Estate.

If you cannot get a Waiver of Notice from everyone, then review 755 ILCS 6-11 and 9-10 as well as CCP 327: Petition to Admit Will as to Omitted or Unnotified Person. Essentially, you will have to file a Petition to restart the notice period for the person who was omitted.

Obtain a Tax ID for the Estate.

Be sure to get written authorization to obtain tax identification number for the Estate before you do so. IRS Form SS-4 can be completed online at the IRS' website.

Establish Estate Accounts and Marshall Assets

Transfer all finances into Estate accounts that list the representative as a fiduciary. Be cognizant of FDIC limits and SIPC limits, and advise your client accordingly. When establishing Estate accounts, banks usually want, at minimum, a photo ID of the fiduciary, a death certificate, Letters of Office and a tax identification number. When transferring assets, financial institutions may require a medallion guarantee from the Representative. Generally speaking, all Estate accounts should be titled in a way that clearly references the Estate, e.g., "John Sample, Administrator of the Estate of Jane Sample, deceased." Make a point to your client that all Estate funds must be kept separate from your client's own personal funds or the funds of anybody else. A Representative can get into serious trouble if s/he commingles assets with those that do not belong to the Estate.

Inventory

This is a simple list of the Estate's assets as of the date of appointment. You must also state the value of each item of personal property. Tangible personal property of little value may be listed together. Use Cook County Form CCP 334. If your Representative has a "Surety" Bond, the Surety must receive a copy of the Inventory within 90 days of appointment.

Mail Notice of Disallowance to Creditors, If Necessary

In general, it is best to refrain from paying any debts until the six month publication deadline has passed. However, administrative expenses should always be paid.

Administrative expenses are bills associated with the operation of the Estate, e.g., funeral expenses, Estate attorney's fees, fees to an accountant for the Decedent's last income tax return or for income tax returns of the Estate, expenses associated with Estate owned real property (incl. property taxes, insurance, mortgages, utilities), loans on estate owned vehicles.

Debts are bills which do not impact the operation of the Estate, e.g. bills associated with a credit card, nursing home, or doctor. However, depending on the size of the Estate, consider whether to direct your client to make the minimum payment on credit cards or similar liabilities.

If your Estate ultimately becomes insolvent, you may have to show that, as Representative, your client paid debts according to a certain priority or else your Representative, personally, may be liable to pay some of the Decedent's debts. You can study this priority at 755 ILCS 5/18-10. Please note how funeral and burial expenses, expenses of administration, and statutory custodial claims are all 1st class claims.

Direct your client to contact an insurance broker to determine if anything different should be applied to the insurance policy due to the Decedent's passing, and confirm that the premiums are paid to date.

If a creditor's claim or a bill is clearly inappropriate and should be disallowed, you must send that creditor a specific form of notice. See 755 ILCS 5/18-11 and use Cook County Form CCP 505.

After the six month publication period has passed, and all debts and claims have been clearly recognized, simply direct your Representative to pay as appropriate. Further notice is unnecessary but be sure to refrain from payments to medical creditors until confirming that insurance has been applied. Advise your client to keep all invoices which showed what was paid to the all creditors, and a copy of all cancelled checks regarding such payments.

Your client can request a fee for serving as Administrator. Encourage your client to keep a journal of all time spent in connection with the Estate as well as all expenses incurred, including all automobile usage. For each entry, your client must record the date, the amount of time spent, and the activity performed (just as you do in your billing invoices). If your client later decides to seek payment for his/her efforts, such records will be critical.

It goes without saying that you should not make any distribution to any heir or legatee until the six month publication period has ended and all debts and claims have been paid. Also, keep in mind that a tax return might be due after an Estate is closed. Be sure to prepay accountants as appropriate.

Spouse's/Child's Award

A surviving spouse gets at least \$20,000 plus at least \$10,000 for each minor child plus at least \$5,000 for each adult dependent child of the Decedent which resides with such spouse. Similarly, minor children who do not reside with a surviving spouse get at least \$10,000 each, plus at least an additional \$20,000. Again, similarly, adult dependent children who do not reside with a surviving spouse also get \$5,000. See 755 ILCS 15/1 & 2 and use Cook County Form CCP 337. These awards are considered 2nd Class claims.

Representative's Fiduciary Duties

Please keep in mind that a Representative has:

- a duty to act reasonably and prudently,
- a duty to refrain from self-dealing,
- a duty to account,
- duties of loyalty and impartiality to each and every beneficiary,
- a duty to fully and completely disclose all material facts relating to dealings with the Estate to each beneficiary, and
- a duty to defend the Will.

Representative's Personal Liability

Torts committed by a Representative, even when acting in a fiduciary capacity, are generally chargeable against the Representative, personally, and not the Estate. A Representative may also be sued personally regarding contracts that originate with the Representative. The Illinois Bar Journal published an excellent article in March 2010 titled "Personal Liability of an Executor or Trustee – Time for a Change." I recommend it.

Actions With Decedent's Property

As mentioned above, a Representative owes the highest duty to each beneficiary to fully and completely disclose all material facts relating to dealings with the Estate. Thus, when your Representative intends to take a major action with an asset of the Estate (e.g., selling the decedent's house), it is the responsibility of both you and your representative to notify the beneficiaries about your intentions, give them a reasonable opportunity to voice a different approach, and weigh the concerns of each beneficiary appropriately. Majority does not always rule. Please keep in mind that if any beneficiary ultimately believes that a Representative acted inappropriately, s/he can usually ask the Court convert the Estate into a "Supervised" Estate and file grievances with the Court. It is my understanding that, on frequent occasion, if concerns are raised to the Court, the Court will often convert to Supervised Administration, even if the Will specifically directs Independent Administration.

Usually, when there is a big decision to be made (e.g., what price to list the house for and what is the lowest price that should be negotiated for the sale), I prepare a writing for all distributees to sign before a Notary Public in which they agree to the Representative's proposals. If any beneficiary objects, I then petition the Court to authorize the reasonable decision.

If real property will probably not be sold within a year of death, be sure to obtain a certified appraisal of all real property as of the date of death. This is necessary to show the basis of the property for the new owner(s) and to support decisions to list real property. Be sure to purchase an appraisal from a Certified Real Estate Appraiser and not simply get a similar document from a real estate agent (which is generally available for free). The IRS will likely question anything less than a certified appraisal when determining the tax consequences upon a subsequent sale of this property. As applicable, use Cook County Form CCP 421, Notice of Probate and Release of Estate's Interest in Real Estate.

Be particularly cautious with investments or purchases of the Estate. It may strike you as unusual that a Representative of a Decedent Estate has no duty to invest assets whatsoever (as opposed to a Trustee or a Guardian), only to administer them appropriately. Consider this when deciding how to hold the funds of the Estate. Please note that the Representative could be personally surcharged for waste and loss. Be sure to enlist an accountant to prepare the Decedent's final 1040 and the Estate's 1041(s).

For guidance regarding vehicles, see: http://www.cyberdriveillinois.com/departments/vehicles/title_and_registration/home.html.

Unexpected Conflicts

If your Estate becomes contested or begins to threaten extensive litigation, consider options for mediation or pretrial through the Circuit Court of Cook County. If all parties agree, such mediation proceedings can be done through a private mediator with Court oversight or directly by the Acting Presiding Judge of the Probate Division, the Honorable Daniel Malone. This approach can dramatically reduce legal fees and expedite conflict resolution.

Personally, since I have practiced before Judge Malone on multiple occasions and in multiple different contexts, I strongly recommend him as a mediator. To learn more about this, I have placed Calendar 14's standing Order in the Appendix. For an updated standing Order, visit <http://www.cookcountycourt.org/Judges-Pages/Malone-Daniel-B>.

Special Administrators

If the Representative has a claim against the Estate, and if all heirs or legatees, as applicable, cannot agree as to the legitimacy or amount of the claim, the Court may then appoint an attorney as a Special Administrator. It will then be that Special Administrator's job to argue as to such things about the claim before the Court. However, the Representative will continue to possess all other duties or responsibilities associated with the Estate.

HEY!!! Are you looking for a different type of volunteer opportunity???

The CVLS PCAP program not only assists with the administration of Estates. PCAP volunteers who have taken at least five other PCAP matters also qualify to also serve as *pro bono* Special Administrators!!!

If you have a passion for helping families determine justice, and if you aren't terrified at the sight of black robes, you may be perfect as a PCAP Special Administrator!!!

For more information, contact CVLS' PCAP czar, Rich Campbell at rcampbell@mayerbrown.com.

Receipts

Always get receipts prior to making distributions to heirs or legatees! Transfer of real property is accomplished by recording this completed document with the Cook County Recorder of Deeds, CCP N421: Release of Estate's Interest in Real Estate under Independent Administration.

Common Problems with Distributions

If the heir or legatee cashes a check from the Estate, but fails to sign a Receipt, you may submit a copy of both sides of the cancelled check as that person's Receipt. However, be sure to redact account information from the check prior to doing so.

You may not be able to find certain distributees, or some of them may refuse to cooperate with you. In these circumstances, you may petition the Court for leave to deposit that person's share with the Cook County Treasurer. If the Court allows you to do that, you will submit a Receipt from said Treasurer, instead of from the heir or legatee, in regards to said person's share when you close the Estate.

If the heir or legatee is a minor, a Guardianship Estate may be required prior to making a distribution in regards to a minor.

Alternatively, you may petition the Court for leave to deposit that minor's share into an account which is subject to Order of Court or until the minor reaches majority. However, should you choose this alternative, be sure to include restrictive language in your proposed Order which states that proceeds shall not be withdrawn without an Order of Court until the minor reaches age of majority. After such an Order is entered, the Court will require that you submit a voucher which shows that restrictive language has been placed on the title of the account.

For more information as to minor distributees, see 755 ILCS 5/24-21, 755 ILCS 5/25-2, 755 ILCS 5/28-10 (e) and 760 ILCS 20/1.

VIII. Closing of the Estate

Each beneficiary must be provided with an Inventory, Account and Final Report before the Estate can be closed. At minimum, the Account must clearly explain all receipts, disbursements and distributions from the Estate. Cook County Court Rule 12.13 specifies requirements for Accounts filed in Court. However, in independent administration, Accounts usually need not be filed.

Minimum Documents to Bring to Court (or Provide via Email When Courts are Closed)

* If applicable.

<u>CCP 302, 315, or 316:</u> Initial Petition
<u>CCP 317:</u> "Copy of Will" form (with Will attached)*
<u>CCP 305:</u> Order Declaring Heirship
<u>CCP 314 or 319:</u> Order Appointing
<u>CCP 303:</u> Waiver of Notice*
Mailed Notice* (see above)
<u>CCP 307:</u> Acceptance of Office of Personal Fiduciary*
<u>CCP 379 and/or 1017:</u> Receipts from all heirs/legatees
<u>CCP 1000:</u> Proof of Mailing and Publication (or Waivers of Notice, where applicable)
<u>CCP 1011:</u> Final Report
<u>CCP 381 or 1012:</u> Order of Discharge

Of course, you must e-file all documents in advance of the anticipated closing date. Again, at present, due to the pandemic, we are emailing courtesy copies to the Judge. Be sure to follow the Court's instructions closely and endeavor to only send items which have been previously e-filed, as applicable. Describe your courtesy copies in an email or cover letter to the Judge in precisely the same order that they are mentioned on the Amended General Administrative Order 2020-P-08. Again, your Judge will appreciate it, and may waive your appearance.

ROOKIE MISTAKE: Your courtesy copies should always include a message that references the date of the next Court appearance. In particular, during the pandemic, it is critical that you include the next Court date in the subject line of your email. Failure to do so may result in an unhappy Judge, or a continuance!

ROOKIE MISTAKE (DURING A PANDEMIC): While Court is held remotely, your proposed Order must always include your email address! A Probate Judge recently told me that Judges and staff in the Division are working very hard, including on weekends and holidays, to move cases forward. It can take substantial time to trace the attorney to a viable email address. Please be considerate about this!

Before you close the Estate, be sure that your accountant has been paid in advance for the final tax returns, and that your bondsman has been paid.

Once the Estate has been closed, alert the bondsman by sending him a copy of the Order of Discharge.