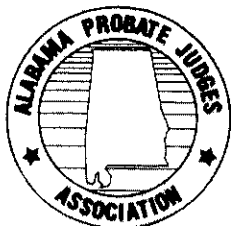


Fiduciary Guidelines and Power of Attorney

Karen Laneaux, Esq.
Montgomery



Probate Training Conference
September 13-14, 2018
University of Alabama School of Law
Tuscaloosa, Alabama



CONSERVATOR HANDBOOK



**STEVEN L. REED
PROBATE JUDGE
MONTGOMERY COUNTY, ALABAMA**

(REV. 8/16)

**IN THE PROBATE COURT OF
MONTGOMERY COUNTY, ALABAMA**

To: Attorney of Record

Attached is the Handbook for Conservators appointed in Montgomery County, Alabama. Provided also is a CERTIFICATE which shall be used to confirm that the petitioner/proposed conservator has reviewed the handbook information with their attorney.

Prior to filing the petition for appointment of conservator, please give this handbook to your client and review same with him/her. When you file the petition for appointment of conservator, this Court requires that the executed CERTIFICATE be filed with it, to verify that such review has been done.

Please note that the filing of the certificate with the Court is a pre-requisite to such proceedings. If you have any questions, please do not hesitate to contact us.

Thank you for your assistance with this matter.

STEVEN L. REED, PROBATE JUDGE
Probate Court, Montgomery County
101 S. Lawrence Street, 3rd floor (36104)
Post Office Box 223
Montgomery, Alabama 36101-0223
www.mc-ala.org/probate
(334) 832-1304 or (334) 832-1244

**IN THE PROBATE COURT OF
MONTGOMERY COUNTY, ALABAMA**

IN RE: THE ESTATE OF

Alleged to be Incapacitated

Case Number _____ - _____

CERTIFICATE

I, the Petitioner, seeking to be appointed as the Conservator in the above-styled case, do hereby attest and certify to the Probate Court that I have read and reviewed the foregoing Conservator's Handbook and discussed said handbook with my attorney and understand all of the provisions contained therein.

Signed this _____ day of _____, 20_____.

*Proposed Conservator
Address: _____

Phone No: _____

Attorney of Record

Subscribed and sworn before me, this _____ day of _____, _____.

(Seal)

Notary Public

Instructions: The petitioner is **required** to review the *Conservator Handbook* with his/her attorney prior to the filing of the petition to appoint a conservator so that the petitioner will have a basic understanding of the duties and responsibilities of becoming a conservator. This certificate, after being properly executed, **must** be filed **with** the Court along with the petition to appoint a conservator.

*Note, if more than one petitioner, please fill out one certificate per petitioner.

CONSERVATOR HANDBOOK

Probate Court of Montgomery County, Alabama

TO THE PROPOSED CONSERVATOR FROM THE PROBATE COURT OF MONTGOMERY COUNTY, ALABAMA:

You are seeking to be appointed as Conservator. A Conservator is one who preserves, protects and manages the assets of someone else. That person whose assets you are preserving is called the Ward. To be a Conservator is a great responsibility. It is most important that you understand the legal requirements that will be placed upon you if the court grants your petition and appoints you as Conservator. The value and importance of retaining an attorney to help you as you proceed through the Conservatorship cannot be overemphasized.

Your Attorney can provide you with assistance by explaining the process, the requirements and certain standards that must be maintained during your Conservatorship administration. The court stands ready to assist in certain areas, but please note that the court can never provide you with legal advice or counsel. Therefore, it is absolutely vital that you confer with your Attorney at the earliest convenient time **before** and **after** you are appointed if you have questions or need advice about your duties and responsibilities as Conservator.

General Information

Please note that if the court appoints you as a Conservator, certain things will be required of you. You must know now what these requirements are and be prepared to fulfill them from the very beginning of your Conservatorship.

Bond:

Once the court has approved your petition, before you can ever act as a Conservator, you must file a bond with the court in a monetary amount that will be set by the court. A bond is protection for the Ward from losses you may have caused by your conduct as Conservator. Should you make any unauthorized disbursements, dispose of assets inappropriately, or otherwise fail to administer the Conservatorship estate in accordance with legal requirements, the bond is a type of surety whereby the court tries to insure that the Ward will not lose his or her assets. This does not mean that your conduct will be overlooked. The bonding company will pursue you to obtain repayment of all monies the company had to spend because of your conduct. In addition, the company will also seek attorney's fees from you.

The cost to obtain the bond and the amount will vary depending on the size of the bond the court requires. The assets of the Conservatorship estate may be used to pay for this bond. Once your bond is filed with the court and approved, you will be sent "Letters of Conservatorship." Once you have Letters of Conservatorship from the court, you are then entitled to act as a Conservator for that Ward.

Inventory:

After you have been appointed as a Conservator, your first task is to determine the size and the makeup of the Ward's assets that you will be protecting and preserving. You must do this by means of filing a written inventory with the court within 90 days of your appointment. The

inventory is a mechanism for listing all assets of the estate. Estate assets may be of two kinds: real property and personal property. Real property means land and improvements thereon. Personal property means all other things such as cash, either on hand or in a bank; stocks and bonds; certificates of deposit; automobiles; trailers; boats; furniture; silverware; jewelry, etc. In addition to listing all of the assets, you must provide an approximate value for each asset.

Attached hereto as Exhibit "A" is a sample list of assets to look for in preparing your inventory. Attached hereto as Exhibit "B" is an inventory form to be filled in once you have been appointed as Conservator and will be filed with the court as stated above.

Monies and Investments:

Please note that you may never invest the Ward's money, also known as "Estate Funds" in individual stocks, mutual funds or other volatile securities. It is **absolutely prohibited** for you to invest the Ward's money in any security that is not federally insured and backed. You are **required by law** to keep all of the estate funds in federally insured securities, which are defined as treasury bills, certificates of deposit, or savings and checking accounts which are insured by the FDIC. This means that even if you think an investment might be a good idea, you are not permitted to invest the Ward's money unless the security is federally insured so as to protect the principal. If you have any question as to whether or not an investment opportunity meets this guideline, make certain that you check with your Attorney to see if the investment is permissible.

Bank Accounts:

After you have been appointed as Conservator, you must open and maintain a **separate** bank account for the estate funds. You may never co-mingle the Ward's assets with your own money or that of any other person. For this reason, you may not use your own bank account for depositing the Ward's money.

Most Conservators put the Ward's money in separate checking accounts, savings accounts, or CD's. All bank accounts that you open for the Ward must meet the same legal standards as investments so that the principal is always secure. This means that the accounts you open must be with banks that have FDIC insured checking and savings accounts.

Canceled Checks:

You must open and maintain a checking account for your Ward with a bank that **will return to you the original canceled checks each month or provide statements with "thumbnail" images of canceled checks**. When it is time to do a partial or final settlement and accounting as explained below, the court requires you to produce original canceled checks, bank copies thereof showing both the front and the back of each cancelled check, or bank copies of thumbnail images.

Records:

The first and foremost obligation of a Conservator is to keep detailed records of all financial activity on behalf of the Ward. This means keeping a detailed record of all income received by the Ward and a record of all disbursements paid out on behalf of the Ward during the Conservatorship. You must also obtain and keep all bank statements and evidence of canceled checks for any checking account you open for the Ward; a copy of all statements from any savings account or statements concerning any CD that you opened on behalf of the Ward. You must keep copies of all receipts showing disbursements of the Ward's money. (See Sample 1 for form)

You are also required to keep records of all non-cash assets such as personal tangible property (furniture, jewelry, silverware, etc.); all real property; all insurance policies in effect on the Ward's life; any burial policy owned by the Ward; and any other property owned by the Ward that is not in the form of cash. You must take action to protect and preserve these properties.

Record Maintenance Date:

Because you are required to keep detailed records of all financial activity, you must begin the Conservatorship with a record keeping system in place. This is not a requirement that exists only at the time of doing the partial accounting. You should talk with your Attorney about the record keeping system that you will use and demonstrate to him or her you're understanding that this obligation to keep records exists from the very beginning of the Conservatorship and that you will be responsible to do the same. Attached hereto as Sample 1 is an example of the type of record keeping system you are encouraged to use.

Expenditure and Sales:

In general, Conservators must expend the estate funds only for the benefit of the Ward. Conservators may not generally expend the Ward's money to benefit other family members without prior court approval. No expenditure of estate funds is permitted unless authorized by the court or by State statute (see § 26-2A-153). If you have any question about spending the Ward's money, check with your Attorney first before making the expenditure.

The Conservator may not sell or cause a lien to be placed on estate assets without court approval. If you wish to sell any estate asset, make certain you confer with your Attorney to have the appropriate petition filed seeking the court's permission before you sell the estate asset.

Partial Settlements and Accountings:

All Conservators are required to periodically file with the court a complete accounting of their activities to prove to the court's satisfaction that they have properly handled the Ward's estate assets. If you are appointed Conservator, you will be required to file with the court a complete settlement and accounting of all your activities as Conservator at least once every three (3) years or 36 months or sooner if the Court so orders it. It is at this time that all of the records you have kept for the prior 36 months (or the time period ordered by the Court) must be made available for review by the court. The forms to file a partial or final settlement are available online to your Attorney at www.mc-ala.org/probate.

Your settlement must include a comprehensive accounting of all receipts by the estate; all disbursements by the estate; and all balances on hand at the time of the accounting. In this accounting, you should submit the original bank statements and the original canceled checks or thumbnail copies of the front sides of canceled checks to support the accounting. In addition, you should maintain all receipts for the expenditures that you have made from the estate's funds in case they need to be filed. This is the reason why record maintenance is so important and why you must begin keeping records from the very beginning of your Conservatorship.

Tax Returns:

You are responsible for preparing and filing any required state and federal tax returns on

the Ward throughout the period of the Conservatorship. You, as the Conservator, in the performance of your duties, should have gathered and kept all records pertaining to the Ward's income, deductions and taxes, in order that such returns, if required, can be promptly and accurately filed.

Closing the Conservatorship:

At such time as the Conservatorship is due to be ended, you must take responsibility for filing a petition with the court to conclude the Conservatorship. If the Conservatorship estate runs out of funds or if the ward has passed away, the Conservator must close the estate. Please note, the Conservator is responsible for closing the estate even if there are no funds to pay legal counsel and costs of court. This means that the Conservator may have to expend personal funds to pay for the closing of the estate.

If there are funds left in the Conservatorship estate, those funds may be used to pay legal counsel and costs of court for the closing of the Conservatorship. In addition, it may be necessary to open up a deceased estate if funds are left after the Conservatorship is settled and closed for proper distribution to the heirs of the ward.

Contact with the Court and Attorney:

If you are appointed the Conservator, it is important that you maintain contact with your Attorney to ask questions concerning your performance during the Conservatorship. This is especially true when preparing to file a partial or final settlement with the Probate Court, if you want to expend funds from the Conservatorship, or sell any assets of the Conservatorship. Make certain that you notify your Attorney of any change of address or phone number throughout the time of your Conservatorship.

It is important that the court be able to find you at any time during the Conservatorship. If you change your address, you are required to notify the Probate Court by sending a written notice of the change of address to Probate Court of Montgomery County at Post Office Box 223, Montgomery, Alabama 36101-0223. In your notice, you must give the name of your Ward and the case number. This will allow this court to make certain that it correctly shows your change of address.

Thank you for your review of this document.

Steven L. Reed, Probate Judge

EXHIBIT "A"

Assets to Look for in Preparing Inventory

- Cash on hand belonging to the Ward's estate
- Uncashed checks and refunds
- Deposit(s) in bank(s), savings and loan association(s), brokerage house(s), credit union(s), etc.;

(XYZ Bank, Checking Account No. 12-345-67)
(ABC Credit Union, Certificate of Deposit \$777-7777)

- Stocks
- Bonds
- Promissory notes
- Partnership interest
- Other business interests
- Life insurance policies - payable to Estate
- Group life insurance payable to Estate
- Furniture
- Antiques
- Artwork
- Jewelry
- Chinaware
- Silverware
- Valuable collections (paintings, oriental rugs, coins, stamps, books, manuscripts, etc.)
- Vehicles (automobiles, trucks, vans, etc.) Include description, VIN and current tag number
- Safe Deposit Box - location and property description (list items having special value)
- Real estate - location and property description (metes and bounds or by map book and page reference)

Liabilities to Look For

- Notes payable to banks
- Notes payable to others
- Real estate mortgages payable
- Accounts payable
- Unpaid income taxes: federal, state
- Unpaid property taxes
- Other liabilities

EXHIBIT "B"

INVENTORY

STATE OF ALABAMA
MONTGOMERY COUNTY

PROBATE COURT
CASE NO. _____

IN THE MATTER OF THE ESTATE OF _____

To the Honorable Probate Judge, Montgomery County:

The following is a full inventory of all the property, real and personal, subject to the conservatorship, of the Estate of: _____

STATE OF _____
_____ COUNTY

_____, as Conservator of the estate of _____, being duly sworn, makes oath that the foregoing Inventory, made by said Conservator is full and complete as to the property, real and personal, subject to the conservatorship, which belong to said ward, so far as the same has come into his/her knowledge and possession.

Subscribed and sworn to before me this _____ day of _____, 20____.

(Notary Public)

{NOTARY SEAL}

Attorney: _____
(Please Print)

Phone No. _____

CONSERVATOR

Address

Phone No. _____

EXHIBIT "C"

Sample Forms for Ledgers and Records

Attached is a sample of the type of ledgers and accounting records the Conservator should keep during the term of the Conservatorship.

Regardless of the particular format you elect to utilize, the Conservator should maintain a system that records by specific entry each and every receipt and disbursement of Estate funds. Proof and verification of individual entries are supported by retention of records such as follows:

Sample No. 1 (Income and Disbursements)

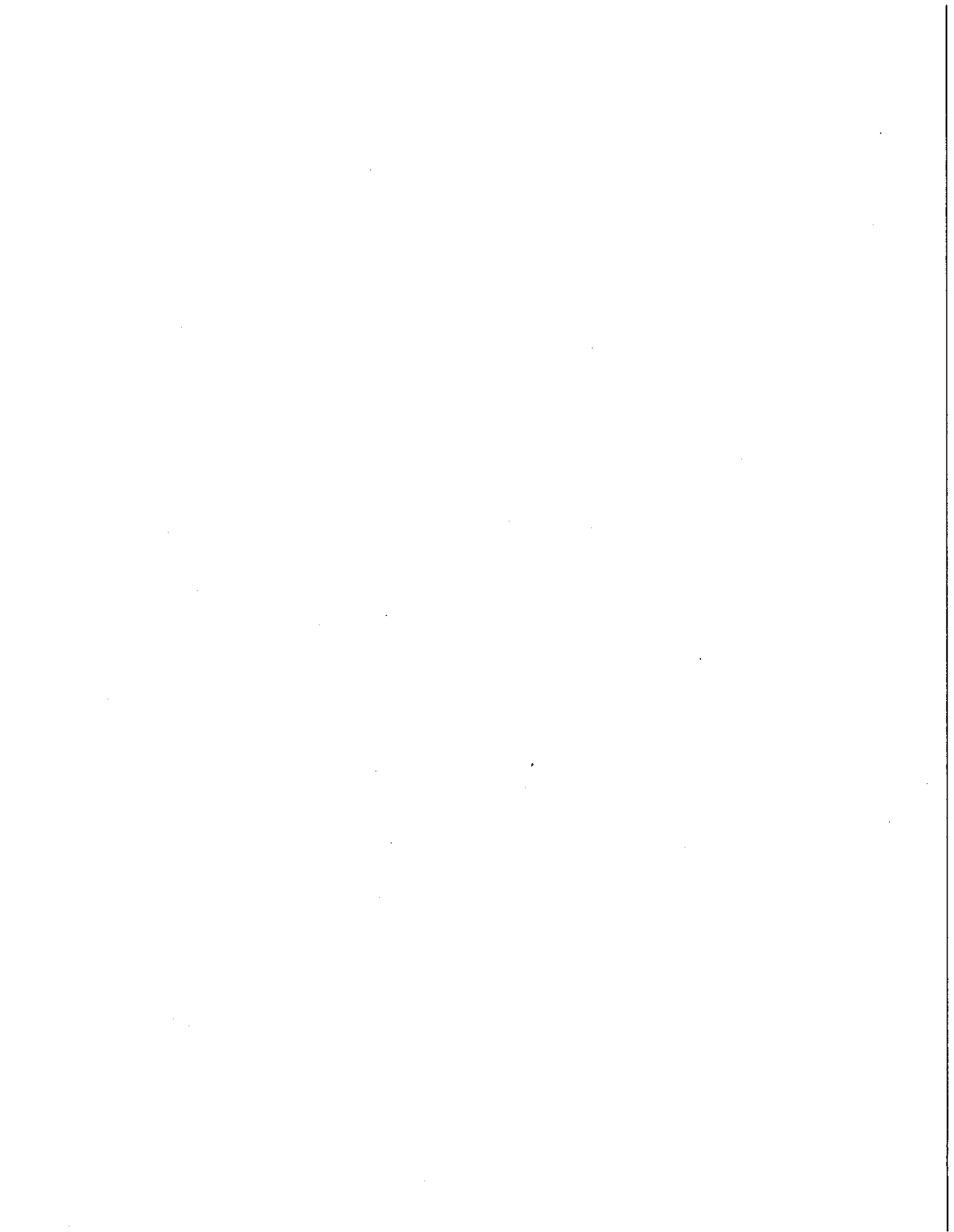
1. All cash receipts, refunds, dividends, interest, rental income from real property, CD's, investment accounts, automobiles, personal property etc., (Such deposits should be posted or listed as an income entry in the ledger.) In addition, it is necessary to list any real property that the Ward owns, whether rented or not on the recapitulation page of the petition for partial settlement.
2. All original checks or thumbnail copies drawn against the Estate's bank account including voided checks. (The respective check should be posted or listed as an expense entry in the ledger.)
3. All original bank statements issued indicating the individual checks drawn against the Estate's bank account during the statement cycle. (The income and expense entries on the statement should correspond to the respective entries in the ledger).
4. All invoices, billing statements, vouchers and receipts for services rendered or items purchased should be preserved and held as proof in support of checks drawn in payment of any such bills.

Note: Each of the above proof items should be kept in chronological order.

9. All invoices, billing statements, vouchers and receipts for services rendered or items purchased should be preserved and held as proof in support of checks drawn in payment of any such bills.

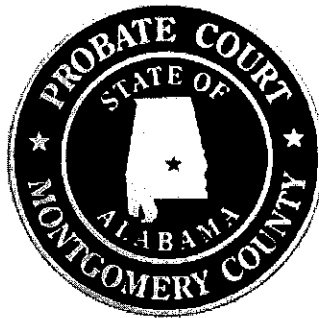
Note: Wherever possible, evidence (documentation) in support of the title to such property/item should also be kept, protected and held for safekeeping.

SAMPLE NO. 1



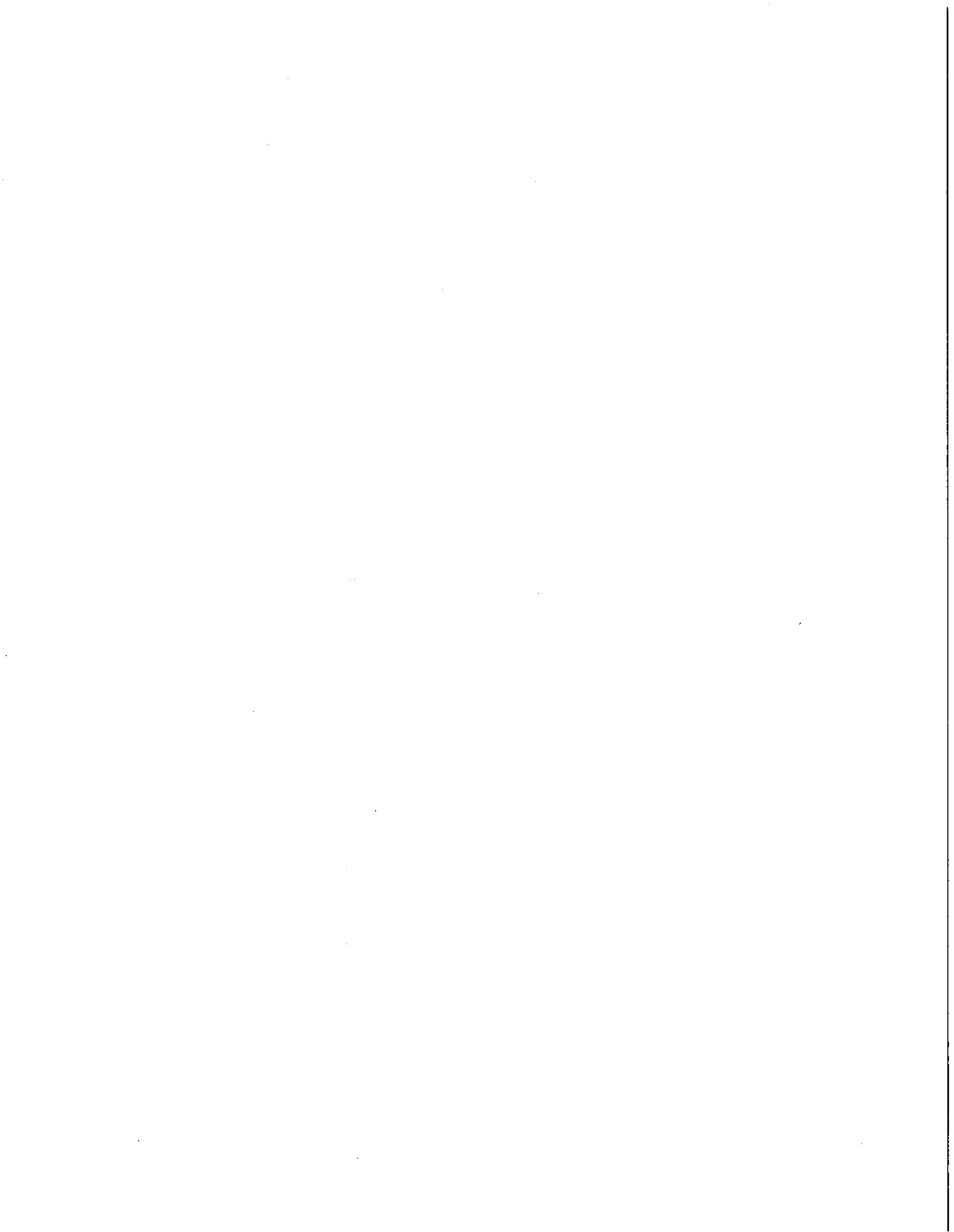
PERSONAL REPRESENTATIVE HANDBOOK

INTESTATE ESTATE ADMINISTRATION



**STEVEN L. REED
PROBATE JUDGE
MONTGOMERY COUNTY, ALABAMA**

(REV. 8/16)



**IN THE PROBATE COURT OF
MONTGOMERY COUNTY, ALABAMA**

IN RE: THE ESTATE OF

Deceased

Case Number _____ - _____

CERTIFICATE

I, the Petitioner, seeking to be appointed as the Personal Representative in the above-styled case, do hereby attest and certify to the Probate Court that I have read and reviewed the foregoing Personal Representative's Handbook, (and discussed said handbook with my Attorney, when applicable) and understand all of the provisions contained therein.

Signed this _____ day of _____, 20_____.

*Proposed Personal Representative
Address: _____

Phone No: _____

Attorney of Record (if applicable)

Subscribed and sworn before me, this _____ day of _____, _____.

(Seal)

Notary Public

Instructions: The petitioner is **required** to review the *Personal Representative's Handbook* (with his/her attorney, when applicable) prior to the filing of the Petition for Letters of Administration, so that said petitioner will have a basic understanding of the duties and responsibilities of becoming a personal representative. This certificate, after being properly executed, **must** be (**and** the attorney, when applicable) filed with the Court along **with** the Petition for Letters of Administration.

*Note, if more than one petitioner, please fill out one certificate per petitioner.

I.
INTRODUCTION

Naming the wrong person to administer an Estate can be disastrous. The person who administers the Estate must – with dispatch – often without compensation, but with great personal financial risk and without conflict of interest:

1. Collect all assets.
2. Pay all obligations.
3. Distribute the remaining assets to beneficiaries.

Although this three-step process seems simple, in reality these tasks can be highly complex, time consuming and in some cases technically demanding.

This booklet briefly discusses some of your duties and the standards of performance expected of you as the Personal Representative as you undertake the different steps and responsibilities involved in the administration of this Estate.

Estates vary in size, make-up and complexity. These differences make it almost impossible to address your duties and responsibilities in a few paragraphs; therefore, you need to discuss these specific details with your Attorney.

While a fair return is to be expected from investment of Estate funds and property, the protection and preservation of the Estate's principal should at all times be given paramount importance.

You, as Personal Representative, act for others' benefit. Your duty is to the Decedent's creditors and beneficiaries.

You need to be certain that you understand your duties and responsibilities that you have assumed in agreeing to administer this Estate. You should not hesitate to contact your Attorney for assistance as needed as you work towards closing the Estate at the earliest time after the six-months claim period has expired.

Some may dismiss as incidental the role trustworthiness plays in the administration of an Estate. Nonetheless, the leadership role of the Personal Representative requires more than commitment and dedication; the position also tests the individual's capacity for honesty. Being honest and trustworthy are essential and compelling ingredients in serving as a fiduciary.

You, as a fiduciary, must not personally profit by virtue of your position. Without prior court approval there should not be any financial transaction between you as Personal Representative and you as an individual. You must be cautious and discreet in and about the handling of the Decedent's Estate, and you may not speculate. You are bound by that standard of care exercised by a prudent person handling the property of another.

Admittedly, in some estates there may be legitimate and fundamental causes that may temporarily interrupt the normal administrative process. On the other hand, the lack of discipline,

procrastination and failure by the Personal Representative to promptly marshal Estate assets and complete the required inventory frequently create unnecessary problems and delays in the Estate's "closing."

Failure to maintain contact with your Attorney and keep heirs and next of kin generally informed and reasonably aware of the Estate's progress breeds and invites suspicion and needless controversy. This can disrupt the regular course of administration, prolong the Estate's administration and increase costs.

II. DEFINITIONS

Some of the terminology used in the administration of an Estate of a Decedent may be unfamiliar to you. Therefore, some frequently used terms are set forth below and discussed briefly. Do not hesitate to discuss any of these with your Attorney if you have any further questions.

1. *Probate Court of Montgomery County.* This is the Court which has primary jurisdiction over the administration of your Decedent's Estate, unless you as Personal Representative or another interested party removes the administration to the Circuit Court of Montgomery County.

2. *Personal Representative.* This is the individual (you) appointed by the Probate Court and charged with the responsibility of collecting the assets of the Decedent, paying all proper obligations and distributing the remaining assets to the heirs.

3. *Estate.* Refers to the property of the Decedent whose affairs are to be administered in this proceeding.

4. *Exempt Property.* In Alabama, certain property of a Decedent is exempt from payment of debts and obligations where the Decedent leaves either a surviving spouse or children (in some cases only if at least one child is still a minor at the time of the death of the Decedent). You should be careful to review with your Attorney those assets which may fall within the category of "exempt" property, homestead allowance and family allowance.

5. *Heirs.* These are the individuals, including a surviving spouse, who are entitled under the law of Alabama to a part of the property of the Decedent who died without a Will.

6. *Minor.* A person under the age of 19 years is a minor, unless his disabilities of non-age have been removed by a court of appropriate jurisdiction. Any time a minor is involved in the Estate, that minor is entitled to separate representation. You will need advice from your Attorney as to when to request the Probate Court to appoint an attorney to protect the interest of that minor.

7. *Property.* This includes both real and personal property, or any interest therein,

which the Decedent owned at the time of his/her death and did not, by contract, pass to some other person or organization. To the extent that the Decedent contracted otherwise, you may not be involved with (a) assets held by the Decedent during his or her lifetime with right of survivorship and (b) collection of life insurance policies, except in unusual situations. Your Attorney will be in a position to give you specific details on those assets covered and not covered by your administration.

8. *Settlement.* After the administration of an Estate has been commenced, you must at some point partially and/or finally conclude administration of the Estate by a proceeding in the Probate Court whereby you account to the court for all assets received, payment of all obligations and distribution of assets to the heirs. It is at this point that you will then become entitled to a court adjudication that you have properly performed your duties as Personal Representative and receive a discharge as Personal Representative.

9. *Letters of Administration.* This is the document you will receive from the Probate Court certifying that you have been duly appointed as the Personal Representative of the Decedent's Estate. You will be asked to display a certified copy of this document from time to time during administration, so it is important that you keep on hand at least one or more certified copies at all times.

10. *Claims and Debts.* There is an important difference between a debt incurred by the Decedent prior to his death (we refer to that as a "claim" against the Estate) and an expense incurred after the Decedent's death by you or someone else for the benefit of the Estate (generally referred to as an "expense"). These will be discussed later in more detail.

III.

INSTRUCTIONS

1. *Your Attorney.* In the course of administering the Estate, there is frequently a sense of uncertainty or vagueness as to "who is actually responsible for what." While the responsibility for carrying out certain prescribed duties and responsibilities may appear blurred, the obligation for performance rests by statute "squarely" on you as Personal Representative.

The role of your Attorney is to instruct, advise, counsel with and direct you as Personal Representative regarding your duties. Your Attorney also prepares all pleadings, legal papers, reports, annual partial settlements, the final settlement and final report for the Estate. If the Estate should become involved in litigation, your Attorney would, likewise, represent you.

2. *Bond.* As Personal Representative, you will be required to file a bond with the Court through an insurance/surety company. Your Attorney will assist you. The bond premium must be paid when the bond is executed, and there may be a premium due each year thereafter until the Estate is closed. It is possible that new or additional items or funds belonging to the Estate may be found, or the security upon which the present bond is based is discovered to be insufficient. In that event, you should notify your Attorney and thereafter increase the amount of bond as required by the Court to reflect the new or enhanced value of the Estate.

3. *Social Security.* You need to determine whether or not the Decedent had a Social

Security account and whether or not he/she, or members of his/her family, may be entitled to any Social Security benefits. In addition, there may be death benefits, and if the Decedent was a Veteran, he/she may be entitled to VA benefits. The local Social Security office should be advised of the Decedent's death. You may be required to return one or more of the last monthly payments, depending upon when you are appointed.

4. ***Investigate Heirs.*** A full and accurate disclosure of the heirs at law is of critical importance. There are serious consequences to omitting heirs. The Personal Representative should investigate who the heirs are of the Decedent. In this regard, the Personal Representative should ascertain the following: (1) the name, age, address and condition of mind of the Decedent's surviving spouse; (2) the name, age, address and condition of mind of ALL of the Decedent's children (including illegitimate children or children born outside of a marriage); (3) whether the Decedent's child or children are also children of the Decedent's surviving spouse and if a child is not the child of the surviving spouse and the child is a minor, the name and address of the child's custodian; (4) if there are heirs who died before the Decedent, the name, age, address and mental condition of the predeceased heir's heirs and whether there is an active estate administration for the predeceased heir; (5) whether the Decedent adopted any child during the Decedent's lifetime and if so, the name, age, address and condition of mind of such child; (6) whether any of the Decedent's children were adopted by others; and (7) if there is no surviving spouse and no children, the name, age, address and condition of mind of the Decedent's other relatives, starting with the Decedent's parents, the Decedent's brothers and sisters, the Decedent's nieces and nephews, noting if any predeceased the Decedent. A review of the death certificate and the obituary are good points of reference, however, they are starting points only. The attorney for the estate shall assist the Personal Representative in ascertaining the identity of the Decedent's heirs and the Personal Representative should consult with the estate's attorney on any issue relating to the Decedent's heirs.

5. ***Notice to Creditors.*** The law requires that you give NOTICE to all creditors of the Decedent's death. In Alabama there are two types of notice. The first is one which must be published in a local newspaper of general circulation in Montgomery County. Currently, this is handled by the Probate Court, but you are responsible for payment of the publication charges.

In addition to the published notice, you are also required to send written notice by first class mail addressed to the last known address of any person, firm or corporation that you know of that may have a claim against the Decedent. If you have reason to believe that a person might be a creditor, but are uncertain, send the notice. Your Attorney can assist you in the language that you must use. **DO NOT** attempt to do this on your own.

6. ***Bank Account(s).*** A separate bank account must be established in your name as Personal Representative of the decedent's estate to hold the Decedent's funds. The account should be interest bearing. An Estate Tax ID number must be obtained from the IRS in order to open this account. **Be sure that the bank you choose will return to you the original canceled checks each month OR provide statements with "thumbnail" images of canceled checks as this documentation may be needed for a partial or final settlement.**

7. *Telephone of Decedent.* You should discontinue phone service (and in some circumstances, other utility services as well). If others are using that service, they should bear the cost. The Estate should no longer pay for such service.

8. *Post Office Box or Street Address.* You should notify the U. S. Postal Service of the Decedent's death. All mail should be forwarded to you. As a matter of courtesy, you should notify any spouse or other person living at the residence of the fact such action is being taken.

9. *Gathering Assets.* You have a duty to search for assets of the Decedent and bring them into the Estate. After obtaining Letters of Administration, you must collect and take possession of the Decedent's property. However, under limited circumstances, you may be entitled to leave real estate and tangible personal property in the possession of someone else, but your Attorney needs to assist you in making this decision. Attached Exhibit A gives you a fairly complete list of assets to look for. Consult with your Attorney about any assets that are claimed by others or may be the subject of specific exemptions.

10. *Assets in Possession of Lawyers and Other Parties.* Generally, lawyers should not hold funds belonging to the estate in the lawyers' trust or bank accounts without prior court approval. Such practice may be appropriate with regard to small amounts of money. However, you are responsible for all of the estate's funds including those held by your lawyer or other third parties.

11. *Insurance of Assets.* The law requires you to take every reasonable precaution to safeguard, maintain and protect the assets of the Estate. This often includes maintaining or obtaining adequate insurance on the assets of value.

12. *Inventory of Assets.* Within 60 days of being appointed, you must file a signed, notarized initial inventory with the Court listing all known assets along with their fair market value at date of death. If additional assets are discovered, an amended inventory listing them must be filed. See Exhibit B for a satisfactory form for your inventory. Your Attorney will be able to advise you regarding the need for any formal appraisals.

13. *Ledger.* You are required to keep accurate records of all Estate receipts and expenditures by maintaining a ledger, a book or group of papers where all financial transactions are recorded. Attached Exhibit C sets forth a suggested set of forms which are satisfactory to the Court for you to use. All cancelled checks and deposits should be in accordance with the ledger.

14. ***Wrongful Death Action Claims.*** Alabama law provides how the proceeds (whether through litigation or settlement) of wrongful death action claims are to be distributed. Generally speaking, such proceeds are not subject to the claims of creditors, including funeral expenses. A Personal Representative is NOT entitled to be compensated from said proceeds unless all of the interest holders consent to the same. If you are going to maintain a wrongful death action claim and want to be compensated for your efforts, you are strongly encouraged to reach an agreement with the interest holders BEFORE the commencement of the wrongful death action and the agreement should be in writing and signed by the interest holders.

15. *Payment of Claims.* All of the Decedent's property subject to probate administration is subject to the debts of the Decedent incurred prior to his death, except for those assets exempted by Alabama law. (See the definition of "Property"). You are not allowed to pay any debts of the Decedent unless a written claim is filed in Court. Creditors have six months from the date the Estate is opened to file a claim with the Court; however, if you fail to timely give the "notice" discussed in paragraph 4 above, this time may be extended. If a claim is not filed within that time period, you are not permitted to pay that claim. There is an order as to the priority of the payment of claims. You should consult with your Attorney before any claims are paid.

16. *Payment of Estate Expenses Incurred by the Personal Representative.* You may pay funeral expenses and administrative expenses you incur, such as bond premiums, attorney's fees or court costs without them being filed as claims. Also, you may pay charges incurred after the date of death on real estate such as taxes, insurance, utilities, or reasonable repairs necessary to protect and preserve the property during the first six (6) months of the administration, even though claims have not been filed for them. As soon as is practicable, you should determine the Estate's cash needs and consult with your Attorney as to whether or not the Court may need to approve the payment of these expenses, either before or after payment.

17. *Investment of Assets.* Monies needed to pay current expenses should be maintained in readily available federally insured bank accounts, even if they do not draw interest. But, you should not keep the Estate's excess cash on hand. To the extent funds are not needed to pay debts and current expenses and are not immediately distributable, you must deposit them into a federally insured, interest bearing account, or invest them in readily marketable loan arrangements secured by real property, US bonds or interest bearing obligations, Federal Land Bank bonds, state bonds or interest bearing obligations, qualified Alabama County General Obligation bonds, full faith and credit interest bearing general obligations of Alabama County or Municipal Boards of Education, bonds authorized by the Alabama Securities Commission which are secured by first lend real estate mortgages, or in obligations of the African Development Bank. **PLEASE NOTE THAT GENERALLY SPEAKING YOU CAN NOT INVEST ESTATE ASSETS IN THE STOCK OR BOND MARKETS.**

18. *Co-mingling Assets.* The Decedent's Estate assets must never be co-mingled with your property or that of others.

19. *Attorney's Fees.* If your Attorney requires a retainer fee when the Estate is first opened, you may pay a reasonable amount. The Court will take such a retainer fee charge into consideration at the settlement. While you are authorized to pay your Attorney during administration, the amount of the attorney's fee may be set or adjusted by the Court at a settlement. If the Court does not allow at least as much as has already been paid, you are responsible for paying the excess back to the Estate.

20. *Personal Representative's Commission.* You will be allowed a commission for your services as Personal Representative; you should consult with your attorney on the amount and the appropriate time to receive a commission. In addition, you could be compensated for

extraordinary services upon obtaining Court approval. If requested, it will be set and approved by the Judge at any partial or final settlement. Any commissions allowed at partial settlements will be taken into consideration in the commission set at final settlement. NOTE: The Court will not approve commissions on any wrongful death assets recovered.

21. *Tax Returns.* You must file any legally required personal income tax returns for the Decedent's income prior to his/her death, and fiduciary tax returns for the taxable income of the Estate earned during each year of the administration. If the Estate is substantial, you may also have to file an Estate Tax return. You should consult your Attorney as to what returns are required. You may need to obtain an Estate tax identification number from the IRS in order to make the returns and open the Estate's bank account.

22. *Sale of Assets.* After receiving Court permission, you may sell any part of the personal property for the payment of debts, to make distribution among the heirs, to prevent waste or prevent it from perishing. With Court permission, you also may sell real property in order to pay debts. Although personal property may be sold for the purpose of distribution to the heirs, real property cannot be sold for that purpose unless one or more of the heirs consent to the sale. However, **all** such sales, mortgages, or leases of real or personal property of the Estate requires court approval **prior** to the sale. You should consult with your Attorney prior to undertaking any transaction involving the title to any asset of the Estate.

23. *Solvency and Insolvency.* You should not pay any claims or make any distribution of assets until you have fully reviewed the assets and debts to determine the Estate's solvency (six months). If the Estate is solvent, legitimate timely filed claims and administrative expenses may be paid at the appropriate time. Those that are not legally allowable must not be paid. If the Estate becomes insolvent, you, through your Attorney, must notify the Court in writing. **Improper payments or distributions could result in your having to reimburse the Estate from your own funds.**

24. *Annual Partial Settlements and Accountings.* You must file an Annual Partial Settlement and Accounting of your administration of the Estate within 12 months of your appointment as Personal Representative, unless you have already filed a final settlement and once every twelve (12) months until the estate is closed. It must include an accounting showing all receipts and disbursements of Estate funds and other assets during the year. Entries for the accounting should be made as receipts and disbursements occur; otherwise, mistakes may result. Keep all bills, invoices, statements, vouchers, voided checks, original honored checks, bank statements, receipts, and other supporting documents, as well as copies of your accountings. "Thumbnail" images provided by banks are acceptable in lieu of original checks.

25. *Distributions to Heirs.* **When the Personal Representative is satisfied that the estate is solvent, he/she may, after six months from the grant of letters of administration, make a distribution with or without prior approval by the Court. PRIOR to distribution, please consult with your attorney on the appropriate time to distribute any part of the property.**

26. *Final Settlement.* Once you have collected all the assets and paid all charges, and the time for the filing of claims has expired, you are required to render a final settlement of your administration of the Estate and distribute the remaining assets. If the heirs are satisfied that you have carried out your duties, the Estate may be closed by consent. If not, a detailed accounting with supporting evidence must be filed and notice given to the heirs. You should consult with your Attorney, who will prepare the proper Petition for Final Settlement.

27. *Instructions.* These instructions are to be read by you and reviewed with your Attorney (when applicable). Your understanding of them is essential to your proper administration of the Estate. You should retain them for ready reference. Consult with your Attorney throughout the Estate administration process and particularly when you have questions. ***At the beginning of these instructions is a certificate attesting to your reading, review, and understanding of these instructions. It is to be detached, executed by you and your Attorney (if applicable), and mailed or delivered to the Probate Judge at the time of filing your Petition for Letters of Administration.***

STEVEN L. REED, PROBATE JUDGE
Probate Court, Montgomery County
101 S. Lawrence Street, 3rd floor (36104)
Post Office Box 223
Montgomery, Alabama 36101-0223
www.mc-ala.org/probate
(334) 832-1244 or (334) 832-7729

EXHIBIT A

Assets to Look for in Preparing Inventory

- Cash on hand in the Estate
- Uncashed checks and refunds
- Deposit(s) in bank(s), savings and loan association(s), brokerage house(s), credit union(s), etc.:

(XYZ Bank, Checking Account No. 12-345-67)

(ABC Credit Union, Certificate of Deposit #777-7777)

- Stocks
- Bonds
- Promissory notes
- Partnership interest
- Other business interests
- Life insurance policies – payable to Estate
- Group life insurance payable to Estate
- Furniture
- Antiques
- Artwork
- Jewelry
- Chinaware
- Silverware
- Valuable collections (paintings, oriental rugs, coins, stamps, books, manuscripts, etc.)
- Vehicles (automobiles, trucks, vans, etc.) Include description, VIN and current tag number
- Safe Deposit Box – location and property description (list items having special value)
- Real estate – location and property description (metes and bounds or by map book and page reference)

Liabilities to Look For

- Notes payable to banks
- Notes payable to others
- Real estate mortgages payable
- Accounts payable
- Unpaid income taxes: federal, state
- Unpaid property taxes
- Other liabilities

EXHIBIT B

INVENTORY

STATE OF ALABAMA
MONTGOMERY COUNTY

PROBATE COURT
CASE NO. _____

In the Matter of the Estate of _____, Deceased.
To the Honorable Probate Judge, Montgomery County:

The following is a full and complete Inventory, listed with reasonable detail, of the property owned by decedent at death, also indicating the fair market value of each item at the date of death, along with the type and amount of any attached encumbrance or liability. **(Attach a separate sheet if needed)**

REAL PROPERTY: (List any mortgage companies, bank loans, etc. on page 2 for all Real and Personal Property.)

<u>Address or Legal Description</u>	<u>Value</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Total Real Property	\$ _____
Amount of Yearly Rental Income (if applicable)	\$ _____

PERSONAL ESTATE:

(Itemize with value)

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Total Personal Estate	\$ _____

MORTGAGE COMPANIES, BANK LOANS, ETC. FOR REAL AND PERSONAL PROPERTY:

(Itemize with value)

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Total	\$ _____

**STATE OF ALABAMA
MONTGOMERY COUNTY**

_____, as Personal Representative(s) of the estate of _____, deceased, being duly sworn, makes oath that the foregoing inventory, made by him/her is full and complete, so far as the same has come to his/her knowledge or possession.

Subscribed and sworn before me this _____ day
of _____ A. D., 20_____.

Notary Public, Montgomery County

(NOTARY SEAL)

Personal Representative(s) Signature

Address

Phone No. _____

Attorney: _____
(Please Print)

Phone No. _____

EXHIBIT C

Ledgers and Records

The Personal Representative should maintain a ledger* that records by specific entry each and every receipt and disbursement of Estate funds. Proof and verification of individual entries are supported by retention of records such as follows:

Ledger No. 1

1. All cash receipts, refunds, dividends, interest, etc. (Such deposits should be posted or listed as an income entry in the ledger.)
2. All original checks or thumbnail copies of the front side of all checks drawn against the Estate's bank account including voided checks. (The respective check should be posted or listed as an expense entry in the ledger.) In lieu of original checks, "thumbnail" images provided by banks are acceptable.
3. All original bank statements issued indicating the individual checks drawn against the Estate's bank account during the statement cycle. (The income and expense entries on the statement should correspond to the respective entries in the ledger.)
4. All invoices, billing statements, vouchers and receipts for services rendered or items purchased should be preserved and held as proof in support of checks drawn in payment of any such bills.

Note: Each of the above proof items should be kept in chronological order.

Ledger No. 2

A separate ledger should be kept and maintained that identifies non-cash assets in the Estate with their description, location and their value, e.g.:

5. All Certificates of Deposit and any other investment account.
6. Any pending lawsuit or litigation.
7. All real property.

Note: Wherever possible, evidence (documentation) in support of the title to such property/item should also be kept, protected and held for safekeeping.

*See attached.

