4B-012. Explanation of forms and how to complete; specific steps if no will has been found.

A. **Step 1. Start the process and have the court appoint you as personal representative.** In order to begin the probate process, you must file the following forms in the probate court in the county where the deceased person lived, or where that person owned property. For Step 1 you will need to use Probate Forms 4B-101, 4B-103, 4B-105 and 4B-106 NMRA.

(1) **Probate Form 4B-101 NMRA. Application for Informal Appointment of Personal Representative; No Will ("Application")** (*See* Sections 45-3-203 and 45-3-301 NMSA 1978). This form generally shows the judge that:

(a) the case is ready to be probated;

(b) the case is appropriate for probate court; and

(c) you are the appropriate person to act as personal representative.

Before you file the application, Probate Form 4B-101 NMRA, you must go to the district court in the district where the deceased person lived and ask if anyone has filed a demand for notice. If someone has filed a demand for notice, that person is entitled to get a copy of all documents you file in the case, including the application and all orders signed by the judge.

If you were married to the deceased person and are not disqualified to act as personal representative, you have the first priority to act as personal representative. If you were not married to the deceased person and you are not an heir or are not the only heir, each of the other heirs must consent to your appointment as personal representative. For example, if you have two brothers, your mother is no longer living and you want to probate your father's estate, each of your brothers must sign the consent section of the application, Probate Form 4B-101 NMRA. If any of the heirs object

to your appointment as personal representative, a formal proceeding is required. (*See* Section 45-5-205 NMSA 1978.) If a formal proceeding is required you may not use these forms and should seek the advice of an attorney.

(2) **Probate Form 4B-103 NMRA, Order of Informal Appointment of Personal Representative (No Will)**. You must submit the Probate Form 4B-103 NMRA, Order of Informal Appointment of Personal Representative (No Will), for the judge's consideration. If the judge approves the application, the judge will sign this order. (*See* Section 45-3-308 NMSA 1978.) The Order of Informal Appointment of Personal Representative (No Will):

(a) appoints you as the personal representative; and

(b) allows the probate to begin once you have accepted your appointment.

(3) **Probate Form 4B-105 NMRA, Acceptance of Appointment as Personal Representative (Will) (No Will).** This form proves that you agree to follow the law when you act as personal representative. You must sign this form in the presence of a notary public. You may submit this form at the same time you submit your application and order. After the judge has signed and filed the Order of Appointment of Personal Representative, (No Will), Probate Form 4B-105 NMRA, the court will file your notarized acceptance and issue Letters of Administration (No Will), Probate Form 4B-105 NMRA, to you.

(4) **Probate Form 4B-106 NMRA, Letters of Administration (No Will).** The court clerk will issue this form after you submit it. This form has two general purposes:

(a) to begin officially your appointment as personal representative; and

(b) to prove to others that the judge has appointed you as personal representative and that you are qualified to make decisions about the decedent's estate.

You may want to have several copies of the Letters of Administration (No Will), Probate Form 4B-106 NMRA. This is the document that shows people that you are the personal representative. You might even consider getting several certified copies of this document. A "certified copy" is a document in which the court clerk formally indicates on the document that it is the same as the original. There is typically a charge to get a certified copy.

B. **Step 2. Send out notice that you have been appointed as personal representative and that a probate action is in process.** Section 45-3-705 NMSA 1978. For Step 2 use Probate Forms 4B-201 and 4B-202 NMRA.

(1) **Probate Form 4B-201 NMRA. Notice of Informal Appointment of Personal Representative.** Once the judge has appointed you as personal representative, you must send out Probate Form 4B-201 NMRA, Notice of Informal Appointment of Personal Representative, within ten (10) days to the heirs of the deceased person.

(2) **Probate Form 4B-202 NMRA. Proof of Notice.** Once you have completed the mailing, complete and file Probate Form 4B-202, Proof of Notice. *See* Subsection D of Section 45-3-705 NMSA 1978.

C. **Step 3. Notify creditors that you are in the process of probating the case.** Sections 45-3-801, 45-3-802 and 45-3-803 NMSA 1978. For Step 3 use Probate Forms 4B-301 and

4B-302 NMRA.

(1) **Probate Form 4B-301 NMRA, Notice to Known Creditors.** Within three (3) months after your appointment as personal representative, you must mail a notice to all creditors that you know of or that you can reasonably find out about. The notice must tell the creditors to present a claim within two (2) months of the later of the mailing to the creditor or the optional publication in the newspaper.

A known creditor who does not receive notice has one (1) year from the date of the decedent's death to present a claim.

(2) **Probate Form 4B-302 NMRA, Notice to Creditors.** An unknown creditor also has one (1) year to submit a claim unless you publish notice in the newspaper. If you publish a notice in the newspaper in the county that notifies creditors to submit their claims, the time period is shortened from one (1) year after death to two (2) months after the first day you publish the notice. *See* Section 45-3-801 NMSA 1978. In order to shorten the time period for claims of unknown creditors, 4B-302 NMRA, Notice to Creditors must:

(a) be published once a week for two (2) successive weeks

(b) in a newspaper of general circulation in the county.

Once you publish the notice to creditors in the paper for two (2) weeks and pay the newspaper for the publication, the newspaper will give you an affidavit of publication that indicates that the notice was published. This affidavit of publication is given to the probate court clerk for filing.

You should not give any notice to creditors if it is over one (1) year from the date of the decedent's death. If these claims have not been paid, it is too late to have them paid.

D. **Step 4. Gather and list the assets of the estate, pay debts and distribute assets.** For Step 4 use Probate Form 4B-401 NMRA for the inventory. The other two parts of the fourth step in the probate process are the primary steps that the forms do not address. Because these steps are at the heart of the probate process, you should ensure that they are properly completed. You should consider seriously consulting with an attorney knowledgeable about the probate process about these steps. Additionally, your local library may have resources for you to look at about this process.

(1) **Probate Form 4B-401 NMRA, Inventory.** Within ninety (90) days of your appointment as personal representative, you must prepare an inventory of the assets of the estate. Sections 45-3-706 to 45-3-708 NMSA 1978. Probate Form 4B-401 NMRA, Inventory, is provided as a model. The inventory must list the items owned by the decedent in reasonable detail and give the estimated value on the date of death of the decedent for each item. It must also give the type and amount of any debt owed for the item, such as debt secured by a lien or mortgage. The personal representative mails the inventory to interested people who request it. *See* Section 45-3-706 NMSA 1978. You do not need to file this document with the court if you want to keep this information private and not part of the public record unless the court orders you to file it.

(2) **Pay debts.** Determine the debts of the estate and pay the valid ones. Distribute the remaining assets of the estate to the appropriate heirs. Within ninety (90) days of your

appointment as personal representative, you must determine the debts of the estate and pay the valid ones. If a creditor makes a claim that you do not think is valid, there is a specific process for objecting to the claim with specific time deadlines. Section 45-3-801 NMSA 1978 *et seq*. It is best to seek the advice of an attorney in this case, because you may be forced to pay an invalid claim if you do not go through the process correctly.

(3) **Distribute assets.** When you have paid all of the decedent's debts, you should distribute the assets that are left to the heirs of the decedent. The heirs and the proper share that each gets are described in Sections 45-2-101 to 45-2-104 NMSA 1978. Distribution of real estate (land) requires a deed from the personal representative to the distributee. It is best to seek a lawyer's advice about how to prepare a deed.

E. **Step 5. Close the estate and probate action.** Section 45-3-1003 NMSA 1978. For Step 5 use Probate Forms 4B-501, 4B-502, 4B-503 and 4B-504 NMRA. Once you have completed all of your work as personal representative and it is at least three (3) months since the appointment of the personal representative, you may close the estate. In order to do this first you must:

(1) **Probate Form 4B-501 NMRA, Accounting.** Send an accounting of everything that you did in your administration of the estate to all of the deceased person's heirs. Probate Form 4B-501 NMRA, Accounting, is provided as a model. The accounting should list all assets in and all assets out of the estate. Therefore, the list of assets and cash into the estate should equal a list of distributions from the estate. You do not need to file this document with the court if you want to keep this information private and not part of the public record unless the court orders

you to file it.

(2) **Probate Form 4B-502 NMRA, Verified Statement of the Personal Representative**. Complete and mail a copy of Probate Form 4B-502 NMRA, Verified Statement of Personal Representative, to all heirs and to any creditors or other claimants whose claims are neither paid nor barred; and file the verified statement, Probate Form 4B-502 NMRA, with the court.

(3) **Probate Form 4B-503 NMRA, Application for Certificate of Full Administration and Release of Property Lien.** Your appointment as personal representative will automatically terminate in one (1) year if there are no pending proceedings involving you as personal representative.

(a) **Taxes.** You should ensure that you have complied with all state and federal tax requirements. Closing of the estate with the court does not necessarily close the estate with the tax authorities. Contact a tax advisor, the Internal Revenue Service or the New Mexico Taxation and Revenue Department about this issue.

(b) **Bond.** If you have given the court a lien on your property instead of filing a bond as personal representative and a year has passed since you filed the Verified Statement of the Personal Representative that closed the estate, you may file Probate Form 4B-503 NMRA, Application for Certificate of Full Administration and Release of Property Lien.

(4) **Probate Form 4B-504 NMRA, Certificate of Full Administration and Release of Property Lien.** At the time you file Probate Form 4B-503 NMRA, Application for Certificate of Full Administration and Release of Property Lien, you should also provide the judge

with a completed copy of Probate Form 4B-504 NMRA, Certificate of Full Administration and Release of Property Lien. Once the judge signs Probate Form 4B-504 NMRA, Certificate of Full Administration and Release of Property Lien, you should obtain a certified copy of the certificate from the court clerk and record it with the clerk of the court where your property is located.

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