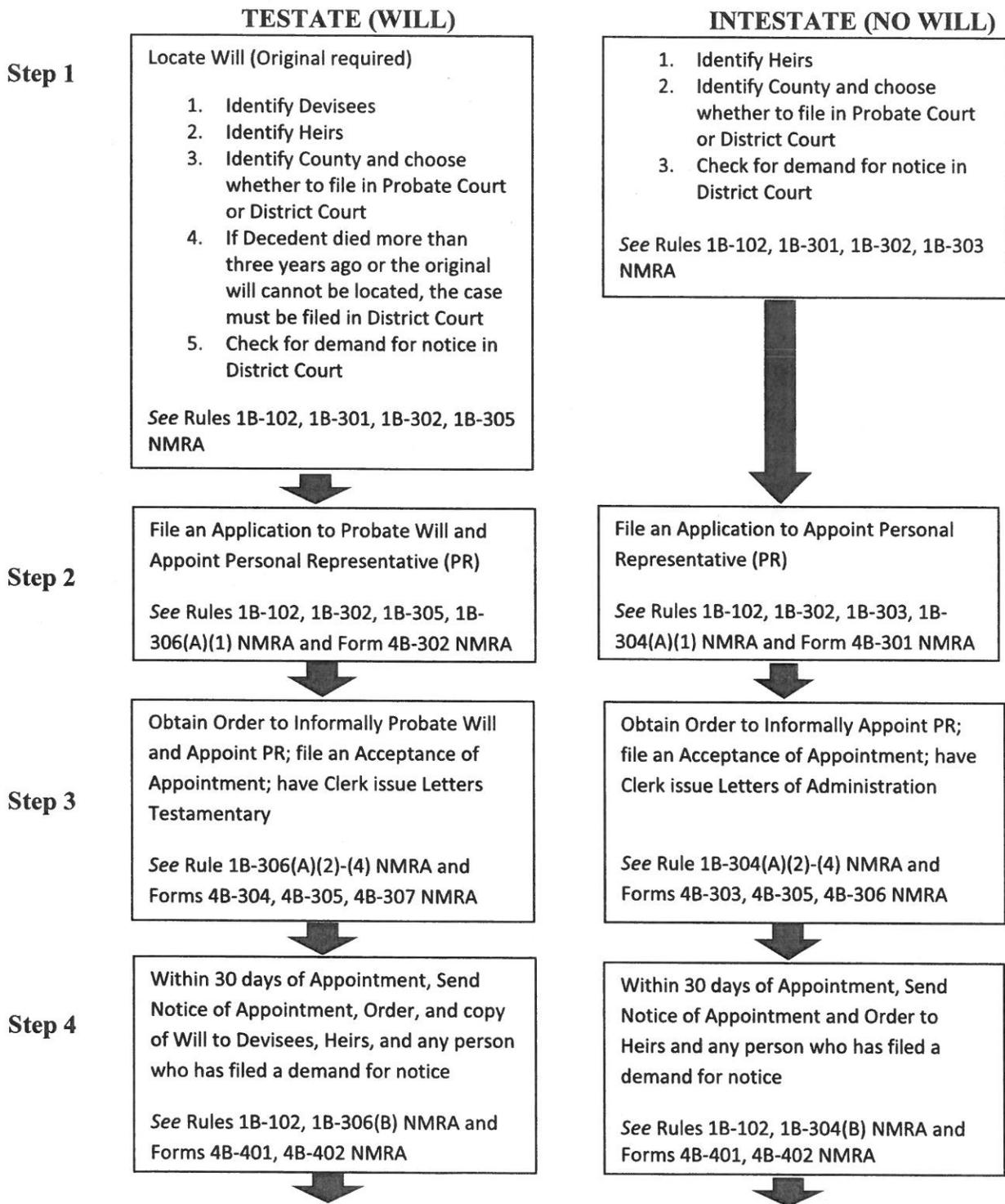


4B-101. Opening and closing a probate court case (Flow chart).

OPENING AND CLOSING A PROBATE COURT CASE



TESTATE (WILL)

INTESTATE (NO WILL)

Step 5

Decide whether to Notify Creditors
If Creditors will be notified,
(a) send notice,
(b) publish notice, OR
(c) both
See Rules 1B-102, 1B-305, 1B-306(C)
NMRA and Form 4B-501 NMRA

Decide whether to Notify Creditors
If Creditors will be notified,
(a) send notice,
(b) publish notice, OR
(c) both
See Rules 1B-102, 1B-303, 1B-304(C)
NMRA and Form 4B-501 NMRA

Step 6

Collect/Inventory Assets of the Decedent,
Value Assets (within 3 months of
appointment), and Determine Debts of
the Decedent

Inventory does not have to be filed with
the court

See Rules 1B-305, 1B-306(D) NMRA and
Form 4B-601 NMRA

Collect/Inventory Assets of the Decedent
and Value Assets (within 3 months of
appointment), and Determine Debts of
the Decedent

Inventory does not have to be filed with
the court

See Rules 1B-303, 1B-304(D) NMRA and
Form 4B-601 NMRA

Step 7

Pay the Family Allowance (\$30,000) and
Personal Property Allowance (\$15,000) if
required

See Rules 1B-102, 1B-305, 1B-306(E)
NMRA

Pay the Family Allowance (\$30,000) and
Personal Property Allowance (\$15,000) if
required

See Rules 1B-102, 1B-303, 1B-304(E)
NMRA

Step 8

Pay costs and expenses of administration

See Rules 1B-102, 1B-305, 1B-306(F)(1)
NMRA

Pay costs and expenses of administration

See Rules 1B-102, 1B-303, 1B-304(F)(1)
NMRA

Step 9

Pay Creditors or Dispute Claims

See Rules 1B-102, 1B-305, 1B-306(F)(2)-
(4) NMRA

Pay Creditors or Dispute Claims

See Rules 1B-102, 1B-303, 1B-304(F)(2)-
(4) NMRA

If you did not deal with Creditors, you
should wait a year from date of death to
distribute assets, or you may owe unpaid
Creditors

See Rule 1B-306(F)(2) NMRA

If you did not deal with Creditors, you
should wait a year from date of death to
distribute assets, or you may owe
unpaid Creditors

See Rule 1B-304(F)(2) NMRA

Or

If you published notice to Creditors, sent notice to known Creditors, and paid all Creditors with allowed claims, and if the time for Creditors to make their claims has elapsed, you may distribute assets

See Rules 1B-305, 1B-306(C)(1) NMRA

Or

If you published notice to Creditors, sent notice to known Creditors, and paid all Creditors with allowed claims, and if the time for Creditors to make their claims has elapsed, you may distribute assets

See Rules 1B-303, 1B-304(C)(1) NMRA

Step 10

Prepare an Accounting of Administration, which does not have to be filed with the court, send the Accounting to Devises and those who filed a demand for notice, and distribute remaining assets to Devises

See Rules 1B-102, 1B-306(H)(1) NMRA and Form 4B-602 NMRA

Prepare an Accounting of Administration, which does not have to be filed with the court, send the Accounting to Heirs and those who filed a demand for notice, and distribute remaining assets to Heirs

See Rules 1B-102, 1B-304(H)(1) NMRA and Form 4B-602 NMRA

Step 11

Close probate and estate when you meet the requirements in the Verified Statement

See Rule 1B-306(H)(2), (3) NMRA and Forms 4B-701, 4B-702 NMRA

Close probate and estate when you meet the requirements in the Verified Statement

See Rule 1B-304(H)(2), (3) NMRA and Forms 4B-701, 4B-702 NMRA

[Adopted by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

1B-101. Scope of rules; probate court jurisdiction; title; citation form.

A. **Scope.** These rules govern procedures in all informal probate proceedings in the probate courts of New Mexico. While probate cases may also be opened in district court, these rules specifically govern probate cases opened in the county probate courts. The rules shall be construed and enforced to ensure the prompt and efficient resolution of probate proceedings. Probate courts shall make no other rules to govern the conduct of probate proceedings. If no procedure is specifically prescribed by rule or statute, a probate court may proceed in any lawful manner not inconsistent with these rules or the Probate Code.

B. **Probate court jurisdiction.**

(1) In uncontested, informal probate proceedings, all relevant information may be considered by the probate court.

(2) A probate case shall be transferred to district court in accordance with Rule 1B-701 NMRA if

- (a) a formal appointment of personal representative is requested;
- (b) a formal closing of the estate or administration is required by the Probate Code or requested by any interested party;
- (c) a contest arises as to the administration of an estate or probate of a will;
- (d) a determination of testacy or heirship is requested by any interested party;
- (e) a hearing is required to determine a matter involving the estate or the administration of an estate; or
- (f) transfer is requested by any interested party or ordered by the probate judge.

C. **Title.** These rules shall be known as the Probate Court Rules.

D. **Citation form.** These rules shall be cited by set and rule number of the New Mexico Rules Annotated, "NMRA," as Rule 1B-___ NMRA.

[Approved by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

1B-201. Commencement of a probate proceeding.

The probate courts shall accept applications for informal probates of wills and administrations and informal applications for special administrations of estates.

A. **Filing of application or proof of authority.** A probate proceeding is commenced by filing any of the following with the court:

(1) an application for informal appointment of a personal representative or for informal probate of a will under Section 45-3-301 NMSA 1978;

(2) an application for informal appointment of a special administrator under Section 45-3-614 NMSA 1978; or

(3) a proof of authority for a domiciliary foreign personal representative under Section 45-4-204 NMSA 1978.

A death certificate shall not be required by the probate court. The probate court's determination to grant or deny the relief requested shall be based on the information provided in the application or proof of authority.

B. **Prompt action required.** When an application or a proof of authority is filed, the probate court shall act promptly.

C. **Opposition; transfer.** If any interested person opposes the relief requested in an application for informal probate of a will, administration of an estate, appointment of a personal representative or special administrator, or a proof of authority, the probate court shall transfer the case to the district court in the county where the probate case is pending under Rule 1B-701 NMRA.

[Approved by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

1B-202. Probate court pleadings; identification of party and lawyer.

All documents presented or filed by a lawyer shall bear the name, address, email address, and telephone number of the lawyer. For self-represented parties, the name and address are required, while the email address and telephone number are optional.

[Approved by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

1B-203. Notice of minors or persons under legal disability.

If any person with an interest in the subject matter of an application for the probate of a will or the administration of an estate is under the age of eighteen (18) years, under a legal disability, or incapable of adequately representing the person's own interest, the application shall state that fact, including the name and age of the person if known, and the name and address of the guardian, conservator, or personal representative, if any has been appointed.

[Approved by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

1B-204. Use of approved probate forms.

In proceedings under the Probate Code, the forms approved by the New Mexico Supreme Court may be used where applicable. Any document submitted to the court should substantially include the content of the approved form. In all probate proceedings, pleadings that are acceptable to the probate court may be used. Except as otherwise provided in these rules and the Probate Code, the form and presentation of pleadings, motions, and instructions shall be governed by these rules.

[Approved by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

1B-205. Unsworn affirmations under penalty of perjury.

Any written statement in a pleading, paper, or other document that is not notarized shall have the same effect in a probate court proceeding as a notarized written statement, provided that the statement includes the following:

- (1) the date that the statement was given;
- (2) the signature of the person who gave the statement; and
- (3) a written affirmation under penalty of perjury under the laws of the State of New

Mexico that the statement is true and correct.

[Adopted by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

Committee commentary. — This rule is consistent with the 2014 amendments to Rule 1-011 NMRA of the Rules of Civil Procedure for the District Courts and Rule 23-115 NMRA of the Supreme Court General Rules, which both provide that an unsworn, written affirmation has the same effect in a court proceeding as a notarized written statement as long as the affirmation satisfies the enumerated requirements.

[Adopted by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

1B-301. Probate court forms; short title; limited purpose of forms; cautions regarding use of forms.

A. **Probate forms.** The Probate Court Forms may be used in the probate courts of this state. The forms may be cited by NMRA form number, as Form 4B-___ NMRA. The forms are available on and may be downloaded from the Supreme Court's website. Additional information about the forms may be obtained from your county probate court.

B. **Limited purpose of forms.** The New Mexico Supreme Court has approved the forms for use in probate court by people who are representing themselves in the process. The forms serve a useful, but limited purpose. They will assist you in completing the paperwork necessary to complete most uncontested probate cases. While you also have the option of opening a probate case in district court, the forms are specifically tailored to assist with probate matters in the county probate courts.

C. **Issues not addressed.** The probate forms do not address many issues including the following:

- (1) how to collect information regarding the debts, if any, of the decedent;
- (2) how to determine if the debts are valid;
- (3) what to do if you believe that a debt is not valid;
- (4) how to determine what, if any, taxes may be owed by the estate and if you need to get a tax identification number for the estate;
- (5) how to locate and collect the assets of the decedent, including payments under insurance policies and retirement accounts;
- (6) how to determine who is entitled to the assets of the estate; and
- (7) how to correctly transfer these assets to the appropriate people (for example, what type of deed to use to transfer land).

D. **Specific examples of issues not covered by the forms.** You will need to address all issues necessary to complete the probate of the estate that you are handling. For example, many estates have both state and federal tax issues that must be addressed. You must address these issues with the appropriate authorities. Other estates require deeds to transfer property. You must have the appropriate documents prepared to do this and you must record the documents properly.

E. **Role of judge and clerk.** Neither the judge nor the court clerk will assist you with the issues discussed above and other similar kinds of issues. It is your responsibility to determine what needs to be done and take the necessary action.

F. **Seek advice of a lawyer.** Personal representatives may seek the help they need from a lawyer experienced in probate or other appropriate professional during the process. [Approved, effective September 15, 2000; 4B-001 recompiled and amended as 1B-301 by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

1B-302. General instructions for probate forms.

A. The different types of probate cases.

(1) ***Routine simple cases.*** The forms are intended for routine probates. If you run into a problem or the estate you are probating is not routine, it is best to seek the advice of a lawyer.

(2) ***Cases that do not need to be probated.*** Certain estates that are worth less than fifty thousand dollars (\$50,000) and that have no real property (usually land) may not need to be probated at all and can be handled in a less formal way. Also, certain estates with a house worth under five hundred thousand dollars (\$500,000) that will pass to a surviving spouse also may not require a probate. *See* Sections 45-3-1201 to 45-3-1206 NMSA 1978. If you believe that the estate you are working on might not need to be probated, you should consult with a lawyer. If the estate does not need to be probated, you may still need a lawyer's help but may not need the forms.

(3) ***Difficult or complex cases.*** Certain estates contain difficult or complex issues that should be reviewed by a lawyer with probate experience. Examples of difficult or complex cases may include one in which there is real property (land) involved and deeds need to be drafted, or one in which there is a large estate and an estate tax return needs to be filed. It may not be appropriate to file such an action in probate court, or the action may require more forms than are provided in the probate forms.

B. Use of forms. The Supreme Court has approved forms for use in probate court by people who are representing themselves in the process. The forms are available at your county probate court and on the New Mexico Supreme Court website. The forms serve a useful, but limited, purpose. They will assist you in completing the necessary paperwork for most routine, simple probate cases.

The forms are for use by people who are willing and qualified to act as a personal representative. This is the person who will collect and value the assets of the estate, pay the debts of the estate, and distribute the remaining assets. A personal representative is a fiduciary who has special obligations to the estate, creditors, heirs, and devisees. The court holds a personal representative to a high legal standard. If you are willing to undertake this position, you should do it with extreme care and caution and pay very careful attention to the necessary details. Because of the fiduciary role that you will be undertaking, it is a good idea to seek help from a lawyer experienced in probate.

You should fill out the forms carefully. Several of the forms have statements in them that do not require you to fill in a blank. However, before you sign the form or submit it to the judge, you must be sure that the statements are true in your case. If not, change the form as needed. When you sign the forms, you are telling the judge under penalty of perjury under the laws of the State of New Mexico, that the information is true and correct. **Please check each form you sign to make sure that it is true and correct.**

If you have questions about issues that the forms do not address, you should consult with a lawyer. Alternatively, the public libraries often have resource materials that may help you answer your questions.

C. Demand for notice. Occasionally someone may file a demand for notice. If you know of a demand for notice, you must send a copy of everything you file and every order the judge signs to the person who has demanded notice.

D. How to get help. The probate court clerks are not lawyers and cannot give you

advice on how to fill out the forms or give you advice on the issues that the forms do not address. The court clerks can give you information regarding the process of filing the paperwork. You should contact court staff for filing procedures.

The probate court judge is not an advocate representing you. The judge cannot and will not give you advice about how to complete the probate. When you act as a self-represented person, you are your own lawyer.

The Supreme Court has approved a list of simplified definitions of certain legal terms, contained in Rule 1B-102 NMRA. The list may be helpful to you. You may get a copy of the rule and approved forms from the probate court or obtain them electronically through the New Mexico Supreme Court website.

Finally, it may be necessary to consult with a lawyer during the process. **SEEK THE HELP YOU NEED BEFORE YOU SUBMIT THESE FORMS.**

[Approved, effective September 15, 2000; 4B-003 recompiled and amended as 1B-302 by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

1B-305. General instructions for probates (*will*).

A. **Determine if there is a will.** First, determine whether the decedent had a will. Different forms are used if there is a will (meaning the person died “testate”) and if there is not a will (meaning the person died “intestate”). This set of instructions should be used if you have found a will signed by the decedent.

B. **Overview of steps.** There are essentially the following eight steps to an informal probate:

(1) file an application to start the process and have the will probated and the court appoint you as personal representative;

(2) within thirty days of your appointment send out notice to the decedent’s devisees and heirs that the will has been probated, that you have been appointed as personal representative, and that a probate action is in process;

(3) during the first year following the decedent’s death, if you want to shorten the time period that creditors have to make claims, you may notify creditors that you are in the process of probating the estate by publishing a notice in the newspaper or mailing or delivering written notice to creditors. You may also choose to notify creditors by both means, publishing and providing written notice;

(4) gather, value, and list the assets of the estate and determine the debts of the estate;

(5) distribute the family and personal property allowances;

(6) pay the costs and expenses of administration and the valid debts of the estate, including all taxes;

(7) distribute the remaining assets of the estate to the devisees of the estate listed in the decedent’s will; and

(8) close the estate and probate action.

C. **Completion and filing of forms.**

(1) ***Print or type information.*** Please print or type the information on all forms. You will want to keep copies of all documents that you file in the court file and orders that the judge signs in the case. All forms and other papers filed with the court shall be clearly legible and printed on one side of the page on good quality white paper eight and one-half by eleven (8 1/2 x 11) inches in size.

(2) ***Copies you will need.*** Remember to take with you an original and as many copies as you want to have when you file papers or take an order to the judge for the judge’s signature. The court clerk will stamp each copy as “Endorsed” (which shows it is a copy of the original filed document), but only at the time of filing. If you do not get an endorsed copy at the time of filing, you will likely have to pay a fee for a copy later.

(3) ***Required filing fee.*** There is a filing fee that you must pay to open the case. In very limited situations, you may apply to the judge for a waiver of the filing fee. *See* Forms 4B-201 and 4B-202 NMRA, Affidavit of poverty and indigency and Order allowing free process).

[Approved, effective September 15, 2000; as amended, by Supreme Court Order No. 07-8300-005, effective March 1, 2007; 4B-021 recompiled and amended as 1B-305 by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

1B-306. Explanation of forms and how to complete; specific steps (will).

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 decedent was domiciled, or where that person owned real property. For Step 1 use Forms 4B-302 and 4B-304 NMRA.

(1) **Form 4B-302 NMRA, Application for informal probate of a will and for informal appointment of personal representative (will) ("Application").** See Sections 45-3-203 and 45-3-301 NMSA 1978. This form generally shows the judge the following:

- (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.

You must sign and date this form and affirm in writing under penalty of perjury under the laws of the State of New Mexico that the statements are true and correct. Before you file the form, you must contact the district court clerk in the district where the decedent was domiciled or owned real property 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 are designated in the will to act as personal representative, you have the first priority to act as personal representative. If you are not the first person designated in the will or are not listed in the will to act as personal representative, the person nominated in the will to be personal representative and each of the devisees must consent to your appointment as personal representative. For example, if you are the second person listed to act as personal representative but every person listed in the will wants you to act as personal representative, each person with a higher priority to serve as personal representative must sign the consent section of Form 4B-302 NMRA, Application. If any person with an equal or higher priority to serve as personal representative does not consent to your appointment as personal representative, a formal proceeding in district court is required. See Section 45-3-203 NMRA 1978. If a formal proceeding is required you may not use the forms and you should seek the advice of a lawyer.

(2) **Form 4B-304 NMRA, Order of informal probate of will and appointment of personal representative (will).** You must submit Form 4B-304 NMRA, Order of informal probate of will and appointment of personal representative (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 probate of will and appointment of personal representative (will) serves the following purposes:

- (a) appoints you as the personal representative; and
- (b) allows the probate to begin once you have accepted your appointment and letters testamentary have been issued to you.

(3) **Form 4B-305 NMRA, Acceptance of appointment as personal representative (no will) (will).** This form proves that you agree to follow the law when you act as personal representative. You must sign and date this form and affirm in writing under penalty of perjury under the laws of the State of New Mexico that the statements are true and correct. 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 informal probate of will and appointment of personal representative (will), Form 4B-304 NMRA, the court will file your acceptance and issue Letters testamentary (will), Form 4B-307 NMRA, to you.

(4) **Form 4B-307 NMRA, Letters testamentary (will).** After the judge has signed and filed the order and the court has filed your acceptance, you should complete this form and submit it to the court clerk to issue. This form has the following two general purposes:

- (a) to officially begin 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 testamentary (*will*), Form 4B-307 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 on which the court clerk formally indicates that it is a true and correct copy of 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. See Section 45-3-705 NMSA 1978. For Step 2 use Forms 4B-401 and 4B-402 NMRA.

(1) **Form 4B-401 NMRA. Notice of informal appointment of personal representative.** Once the judge has appointed you as personal representative, you must send out Form 4B-401 NMRA, Notice of informal appointment of personal representative, within thirty (30) days to the heirs of the decedent, the devisees of the estate, and any person who has filed a demand for notice as described in Paragraph (A)(1) of this rule.

(2) **Form 4B-402 NMRA. Proof of notice.** Once you have completed the mailing, complete and file Form 4B-402, Proof of notice. See Section 45-3-705(D) NMSA 1978.

C. Step 3. Notify creditors that you are in the process of probating the estate (optional). During the first year following the decedent's death, if you want to shorten the time period that creditors have to make claims, you may notify creditors that you are in the process of probating the estate by publishing notice to creditors in the newspaper or mailing or delivering written notice to creditors. You may also choose to notify creditors by both means, publishing and providing written notice. See Sections 45-3-801, 45-3-802, and 45-3-803 NMSA 1978. For Step 3 use Probate Form 4B-501 NMRA. Do not pay any claims until you read Steps 4-7 below.

(1) **Form 4B-501 NMRA, Notice to creditors by publication and notice to creditors by written notice (mailing or other delivery).** A creditor has one (1) year from the date of the decedent's death to submit a claim unless you publish notice in a newspaper. If you publish notice in the newspaper in the county where the probate proceeding is filed that notifies creditors to submit their claims, the time period is shortened from one (1) year after death to four (4) months after the first day you publish notice. In order to shorten the time period for claims, notice to creditors must be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the county. If you publish the notice to creditors in the newspaper for three (3) consecutive weeks, the newspaper will give you an affidavit of publication that indicates that the notice was published. Give the affidavit to the probate court clerk for filing. The only method for shortening the time to known creditors or to those creditors that can be reasonably ascertained is to provide such creditors with actual written notice.

If you know who the creditors are, you may deliver written notice to known creditors. Form 4B-501 NMRA provides the option of delivering written notice to known creditors in addition to providing notice by publication. If notice is published and written notice is also provided, a creditor has the greater of four (4) months from the date of first publication or sixty (60) days from the mailing or other delivery of the notice to present its claim.

Claims that have not been presented within one (1) year of the decedent's death shall not be paid.

(2) **Secured creditors.** Secured creditors are creditors of the decedent that have a mortgage, deed of trust, secured loan, or security interest in property of the decedent, such as a lien on a vehicle, for example. *See* Sections 45-1-109 and 45-3-104(B) NMSA 1978. Consider seeking the advice of a lawyer with respect to secured creditors of the decedent.

D. **Step 4. Prepare an inventory, meaning gather, value, and list the assets of the estate, and determine the debts of the estate.** For Step 4 use Form 4B-601 NMRA, Inventory. Within ninety (90) days of your appointment as personal representative, you must prepare an inventory of the assets of the estate. *See* Sections 45-3-706 to 45-3-708 NMSA 1978. Form 4B-601 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. You must mail the inventory to interested people who request it. *See* Section 45-3-706 NMSA 1978. Unless ordered by the court to file this document, you are not required to do so, and you are free to keep the information private and out of the public record.

E. **Step 5. Distribute the family and personal property allowances.** This Step, along with Steps 6 and 7, are at the heart of the probate process, and you should ensure that they are properly completed. In doing so, you should seriously consider consulting with a lawyer knowledgeable about the probate process. Additionally, check with your local library for available resources.

(1) **Distribute the family allowance.** You must pay the family allowance of thirty thousand dollars (\$30,000) to the surviving spouse. Unless the surviving spouse affirmatively waives the right to the family allowance, the spouse is entitled to the family allowance, even if the spouse is disinherited under the decedent's will. If there is no surviving spouse, you must pay the family allowance to each minor child and to each dependent child of the decedent. The family allowance is to be divided equally among all the minor and dependent children. *See* Section 45-2-402 NMSA 1978.

(2) **Distribute the personal property allowance.** After payment of the family allowance, you must distribute the personal property allowance, in a value not to exceed fifteen thousand dollars (\$15,000), to the surviving spouse from household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the personal property allowance must be distributed to the decedent's children who are devisees under the decedent's will or who are entitled to a share of the estate under Section 45-2-302 NMSA 1978. If the value of these items is less than the personal property allowance of fifteen thousand dollars (\$15,000), the remaining value of the personal property allowance shall be paid from other assets to make up any deficiency, if there are assets remaining after you pay the family allowance. *See* Section 45-2-403 NMSA 1978.

F. **Step 6. Pay the costs and expenses of administration and the valid debts of the estate, including all taxes.**

(1) **Pay costs and expenses of administration.** After the family allowance and personal property allowance are paid, you should next pay the costs and expenses of administration. Those costs and expenses typically include any filing fees you have paid, payment for your time spent working on estate matters, and payment of anyone you employed to assist you with estate matters. There is no set hourly rate for personal representative fees, and you

should consider consulting with a lawyer to determine an appropriate, reasonable fee for your services.

(2) ***Pay remaining claims and debts of the estate, including all taxes.*** After you have paid the allowances and costs and expenses of administration, you must pay the remaining valid claims and debts of the estate. If the estate does not have sufficient funds to pay all of the valid claims and debts owed, you must pay the claims and debts in the order approved by law. *See* Section 45-3-805 NMSA 1978. If there are sufficient assets in the estate and you, as the personal representative, fail to pay the valid claims and debts of the estate, including federal and state taxes, you may be personally liable for any valid claims and debts that remain unpaid.

(3) ***Disputing debts.*** 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. *See* Section 45-3-806 NMSA 1978. In this case, it is best to seek the advice of a lawyer, because you may be forced to pay an invalid claim if you do not go through the process correctly.

(4) ***Exception to requirement to pay debts.*** There is an exception to the requirement that the personal representative pay the valid debts of the estate. This is when the estate is considered a “small estate.” To determine if the estate you are probating is a small estate, *see* Sections 45-3-1203 and 45-3-1204 NMSA 1978 and Paragraph (H)(3) of this rule. It is best to seek a lawyer’s advice about whether an estate qualifies under this exception. Use Form 4B-702 NMRA.

G. Step 7. Distribute the remaining assets of the estate to the devisees of the estate listed in the decedent’s will. When you have paid all of the decedent’s debts, you should distribute the assets that are left to the devisees listed in the will. Distribution of real estate (land) requires a deed from the personal representative to the distributee. If you have any question about the form of a deed or how to prepare a deed, seek a lawyer’s advice.

H. Step 8. Close the estate and probate action. For Step 8 use Forms 4B-602 and 4B-701 NMRA. Once you have completed all of your work as personal representative and at least six (6) months have passed since the appointment of the personal representative if notice to creditors is given, or one (1) year has passed if no notice to creditors is given, you may close the estate. *See* Section 45-3-1003 NMSA 1978. In order to do this you must first do the following:

(1) ***Form 4B-602 NMRA, Accounting.*** Send an accounting of everything that you did in your administration of the estate to all of the devisees and those persons who filed a demand for notice. Form 4B-602 NMRA, Accounting, is provided as a model. The accounting should list all assets and liabilities of the decedent, receipts and disbursements made by the personal representative, and remaining assets of the estate. The list of assets and cash into the estate should equal a list of payments and distributions from the estate. The list of payments and distributions includes payments to creditors, payments for administrative expenses, and distributions to devisees or heirs. Unless ordered by the court to file this document, you are not required to do so, and you are free to keep the information private and out of the public record.

(2) ***Form 4B-701 NMRA, Verified closing statement of the personal representative.*** Complete and mail a copy of Form 4B-701 NMRA, Verified closing statement of the personal representative, to all devisees and to any creditors or other claimants whose claims are neither paid nor barred, and file the verified closing statement with the court.

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 resolve pending matters with any 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 closing statement of the personal representative that closed the estate, you may wish to obtain a release of the property lien. *See* Section 45-3-1007 NMSA 1978.

(3) *Form 4B-702 NMRA, Verified small estate closing statement of the personal representative.* When the value of the entire estate, less liens and encumbrances, does not exceed the family allowance, personal property allowance, costs and expenses of administration, reasonable necessary medical and hospital expenses of the last illness of the decedent, and reasonable funeral expenses, the estate is considered a small estate. There are two steps you must take to close a small estate.

(a) *Distribute assets.* Distribute the estate's assets to the persons entitled thereto. You may do this without giving notice to creditors. *See* Section 45-3-1203 NMSA 1978.

(b) *Prepare closing statement.* Complete and mail a copy of Form 4B-702 NMRA, Verified small estate closing statement of the personal representative, to anyone entitled to a distribution from the estate and to all creditors or other claimants whose claims are not paid or barred. Also send a copy of the accounting for the estate to anyone entitled to a distribution from the estate whose interests are affected by the accounting. File the Verified small estate closing statement of the personal representative, Form 4B-702 NMRA, with the court. *See* Section 45-3-1204 NMSA 1978.

[Approved, effective September 15, 2000; as amended by Supreme Court Order No. 07-8300-005, effective March 1, 2007; 4B-022 recompiled and amended as 1B-306 by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

1B-401. Notice; filing required.

Any notice required under the Probate Code shall be filed with the probate court.
[Approved by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

1B-501. Inventories and accountings.

Inventories and accountings are required to be prepared in the probate of an estate, but are not required to be filed with the probate court.

A. **Inventories.** An inventory of the estate shall be prepared within ninety (90) days of the appointment of the personal representative and must be provided to all interested people who request it. The inventory must contain the following:

- (1) a list of the items owned by the decedent in reasonable detail;
- (2) the estimated value of each item on the date of death of the decedent; and
- (3) the type and amount of any debt owed by the decedent.

B. **Accountings.** Accountings shall contain sufficient information to place the interested parties on notice as to all significant transactions affecting administration during the accounting period. The accounting must contain the following:

- (1) the receipts and disbursements for the period covered by the accounting, with reasonable detail;
- (2) the assets remaining at the end of the period; and
- (3) a description of all significant transactions affecting administration during the accounting period.

C. **Objections.** If objections are made to an inventory or an accounting, the probate court shall transfer the case to the district court for final determination and closing under Rule 1B-701 NMRA, unless the objections may be resolved by the probate court without an evidentiary hearing.

[Approved by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

1B-601. Closing probate; verified statement.

A personal representative or special administrator may commence closing an informal probate by filing a verified statement under Section 45-3-1003 NMSA 1978 or Section 45-3-1204 NMRA.

[Approved by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

1B-602. Compensation.

Generally, personal representatives, special administrators, and professionals they employ, are entitled to reasonable compensation for duties performed.

[Approved by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

1B-701. Transfer from probate court to district court.

If transfer is required under Rule 1B-101(B)(2) NMRA, the probate court shall transfer the case to the district court in the county where the probate case is pending. Whether the transfer is initiated by the probate court or on request of an interested party or an attorney, the probate court shall make a copy of the file to retain in the probate court and the probate court shall send the original file to the district court along with the transfer order. Unless otherwise ordered by the court, the person initiating the transfer shall check with the district court clerk about any fee that may be required.

[Approved by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]