

GUIDE TO CHAMPAIGN COUNTY PROBATE PRACTICE (as of 5-7-2025)

This guide is intended to assist probate practitioners with the logistics of opening, administering, and closing decedent's estates in Champaign County Circuit Court. Self-represented persons seeking appointment as executor/administrator are strongly encouraged to consult with a licensed attorney to address probate matters as the Court cannot give litigants legal advice on how to proceed; regardless, the Court will require an attorney to represent a person seeking letters in any complex or contested proceeding. Nevertheless, lawyers and self-represented litigants alike are always welcome to contact the undersigned probate judge to answer routine questions, to set hearings and to otherwise resolve cases. **If you have received a "probate order rejection report" after submitting draft orders to the judge, this guide may provide more context for why your orders were rejected.**

APPOINTMENT OF ADMINISTRATORS/EXECUTORS WITHOUT A HEARING

Petitioners appointed as executor by a decedent in a Will are not required to set a hearing in order for letters of office to be issued, provided the other requirements below are satisfied. However, parties who bring petitions for intestate cases or for appointment of an administrator with the Will annexed **must** comply with 755 ILCS 5/9-5. This means petitioners must file written waivers from all interested parties with equal/greater right to act or nominate administrator; otherwise, the petitioner must set the matter for hearing with appropriate notice before orders to issue letters will be entered.

Requests for *ex parte* appointment of an administrator will not be granted unless the criteria referenced above are clearly shown. Letters will not be issued, for example, on the representation that the Petitioner "is not aware of anyone else who desires to serve as Administrator," or "the Decedent's primary nominee for executor has not been located." In these situations, petitioners should proceed with setting the matter for hearing and give notice.

On the other hand, waivers from interested parties are **not** necessary where a Will is admitted to probate and that Will identifies the petitioner as the executor. In that case, all that is required is that notices of appointment and the other statutory notices regarding heir/legatee/creditor rights are given to those interested parties after the appointment order is entered, but within the statutory time frame.

OUT OF STATE PETITIONERS

If a petition for letters is brought by a person who does not reside in Illinois and no co-petitioner resides in Illinois, then the petition **must** list an agent appointed to receive service of process per Section 5/1-11 of the Act. The Court will not enter orders appointing a representative until this designation is made.

OPENING AN ESTATE - BASICS

Three orders to open an estate are generally required:

1. Order appointing a representative (executor if admitting a will; administrator if there is no Will or no person named as executor under the Will is available to serve).
2. Order finding heirship
3. Order approving (oath and) bond

Petitions for these orders follow a statutory framework, specifically, 755 ILCS 5/6-2 when admitting a Will with an executor, or 755 ILCS 5/9-4 if there is no Will or no named executor available. ***Petitioners must follow the requirements for obtaining relief that are listed in these statutes.***

Listing Heirs, Legatees and Devisees – For example, petitions to open estates – whether to admit a Will and appoint an executor or appoint an intestate administrator – must list the heirs, legatees and devisees (devisees are persons who inherit real property) as well as their addresses and whether any are minors or disabled.

Affidavits Of Heirship – Affidavits of heirship are required for ***every petition requesting letters of office.*** In that affidavit, the petitioner or some other knowledgeable person must establish the exact nature of relationship between the decedent and all of the persons who could potentially be an heir, even if one of those persons is deceased, even if that person died without descendants of their own. It is not enough to give a list of names; a genealogy sufficient to establish descent under 755 ILCS 5/2-1 is ***required.***

Do not file affidavits of heirship claiming that the decedent had no heirs. Everyone has heirs; the question is can we determine who they are. To this end, the statute of descent is critical reading for all probate practitioners; attorneys should consult the laws of descent (found at 755 ILCS 5/2-1(a) et seq.) particularly the first three degrees of heirship: (1) Spouse and children (for any deceased children, their descendants). (2) If no spouse or children, then parents and siblings (for any deceased siblings, their descendants), and (3) If no spouse, children, parents or siblings, then grandparents, aunts and uncles (and, again, descendants of any deceased aunts and uncles [cousins]).

Marriage and Civil Unions – A party may have never been married but they could be a party to a civil union, or vice-versa. Affidavits of heirship should specify whether the Decedent has ever been a party to ***either*** type of union.

Heirship Orders – An order finding heirship might be known as a “decree finding heirship” or “an order of heirship”; they are all the same, and the caption will not affect whether the order will be approved; the contents of the order is what counts, specifically that the decedent is identified, where the decedent died or the residence of the decedent’s death, and the identity of the decedent’s heirs.

Bond and Surety – Bond required of a representative acting under personal surety (755 ILCS 5/12-3) or where surety has been waived by the testator (755 ILCS 5/12-4) is ***twice the value of the personal estate*** unless a corporate surety bond is presented, in which case the bond is ***1.5 times the value of the personal estate.*** (755 ILCS 5/12-5) Surety cannot be waived except by the testator. Generally, only Illinois resident citizens (i.e., people this Court has jurisdiction over) are acceptable personal sureties. Requests for waiver of surety will generally be denied unless there is a specific waiver of surety by the testator for the person requesting the waiver. ***Therefore, all requests for letters of administration or administration with the Will annexed will require personal surety by 2 citizens residing in Illinois or by a corporate surety authorized to conduct business in Illinois.*** This includes estates opened solely for prosecuting tort matters, where the minimum bond is \$500.00 (Sec. 12-5(b)).

If feasible, orders approving oath and bond should be submitted as a single page document – this avoids confusing the clerk staff who process submissions (to that end, ***always identify draft orders that you file as an order to be signed by a judge in the note section of the online form.***)

PETITIONS THAT LIST ALL ASSETS AS “UNKNOWN” REQUIRE AN INVENTORY

Some petitions list the value of realty and/or personalty as “unknown”. In such cases, the Court will likely order the representative to file an inventory within 90 days, even if the estate qualifies for independent administration. The reason being that there has to be some basis for establishing the amount of the bond (something more specific than “two times the value of the personal estate”), if only so that heirs, legatees and/or creditors have basic information about the contents of the estate.

NOTICES

Any hearing requires 14 days prior notice unless waived by all interested parties or good cause is shown for lesser notice (Local Rule 2.1(f)). Any notice that contemplates remote appearances “shall include information necessary for a case participant to appear *in person or remotely*, including any information necessary for case participants to access the applicable technology platform to appear remotely.” (Supreme Court Rule 45(b)(4))

CLAIMS PRACTICE

Estates that have unresolved claims filed with the circuit clerk must be resolved before the Court can enter orders approving final reports or discharging representatives. Please either obtain waivers or file objections to such claims and set them for hearing with notice to interested parties.

CLOSING AN ESTATE

An estate cannot be closed until the first of the following events occur:

- (a) 6 months has passed following notice to heirs, legatees and creditors - directly when known, otherwise by newspaper publication if not (755 ILCS 5/18-3(a)), or
- (b) 2 years have passed following the decedent’s date of death.

Upon satisfaction of that time requirement, orders submitted for closing an estate without hearing will be granted if:

- (a) receipts/waivers are on file from all interested parties (creditors, legatees if there is a will, heirs if there is not) per 755 ILCS 5/28-11(c), or
- (b) 42 days prior notice is given to all interested parties along with documentation as set forth in 755 ILCS 5/28-11(e).

If the above requirements cannot be fulfilled, closing an estate will require passage of the waiting period and a hearing with notice to all interested parties.

BEST PRACTICES

- Submit Petition to Admit Will to Probate with a copy of the Will attached as an exhibit (including file number – Champaign County uses a Year-WI-numeral system [e.g. 2025-WI-102]).
- List all heirs, legatees and devisees in the petition with addresses, identifying minors and disabled parties in petitions.
- At termination, include waivers/receipts from all legatees/heirs entitled to notice (heirs are not generally entitled to notice when the will has been admitted to probate and the will contest period has expired).
- File proof of publication (e.g., newspaper notice) if you are attempting to close an estate less than 2 years after the death of the decedent.
- File releases from all claimants whose claims have been approved or are not resolved.
- Leave details of the entry date **entirely blank** on proposed orders
i.e., do not write “Entered this ___ day of _____, 2024”; instead, submit the order as “DATED: _____”. It is much easier (and faster) for the judge to enter order dates in this way.

CONTACT

Please do not hesitate to contact the Court if you have question about this guide or have suggestions for its improvement.

Current as of May 7, 2025



Chad S. Beckett, Circuit Judge