

Ancillary Probate in South Carolina

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A Practice Note summarizing the procedure for ancillary probate in South Carolina. This Note identifies the key laws and procedures for an ancillary estate proceeding in South Carolina, such as preliminary requirements for beginning an ancillary proceeding, the appointment of an ancillary fiduciary (referred to as personal representative), the petition for ancillary probate or ancillary administration, and the administration and distribution of an ancillary estate.

If a person who is not a resident of South Carolina dies owning property in South Carolina that does not pass by title or by operation of law, the estate fiduciary in the state where the decedent lived (the decedent's domicile) may be required to open an additional estate proceeding in South Carolina to transfer the South Carolina property if an alternative transfer procedure is unavailable (see Alternatives to Ancillary Administration). This additional estate proceeding is called an ancillary proceeding.

An ancillary proceeding in South Carolina is always secondary to the estate proceeding in the decedent's state of domicile. The ancillary proceeding is handled by a fiduciary appointed by a South Carolina court, typically with the advice and supervision of a South Carolina lawyer hired by the decedent's family or the estate fiduciary in the decedent's state of domicile to assist with the ancillary proceeding. An ancillary proceeding in South Carolina is controlled by South Carolina law. This Note provides an overview of the ancillary proceeding process in South Carolina.

Types of Estate Proceedings

In South Carolina, the provisions governing the probate and administration of estates are found in S.C. Code Ann. §§ 62-1-101 to 62-4-401. There are several main types of estate proceedings in South Carolina:

- Informal probate of will or of an intestate estate (S.C. Code Ann. §§ 62-3-301 to 62-3-311).

- Formal probate and appointment (S.C. Code Ann. §§ 62-3-401 to 62-3-414).
- Affidavit of collection of personal property (S.C. Code Ann. §§ 62-3-1201 and 62-3-1202).
- Summary administration (S.C. Code Ann. §§ 62-3-1203 and 62-3-1204).
- Administration under Part 5 (S.C. Code Ann. §§ 62-3-501 to 62-3-505).
- Ancillary probate or administration (S.C. Code Ann. §§ 62-2-101 to 62-2-1090, 62-3-101 to 62-3-1312, 62-4-101 to 62-4-401). Many of South Carolina's statutes that apply to the other estate proceedings also apply to ancillary probate and administration.

This Note addresses ancillary probate and administration. Ancillary probate and ancillary administration are the legal processes generally used when a person who is not a resident of South Carolina dies owning certain property in South Carolina. In an ancillary probate proceeding, the court appoints a representative to:

- Collect the decedent's South Carolina situs property.
- Pay the decedent's debts and estate expenses.
- Distribute the remaining South Carolina property to the appropriate individuals.

For more information on the other types of estate proceedings, see [State Q&A, Probate: South Carolina](#).

Ancillary proceedings are most often conducted as informal administration proceedings. For more information on informal administration proceedings, generally, see [State Q&A, Probate: South Carolina: Informal Proceedings](#). Ancillary proceedings may need to be formal if they involve matters such as:

- Litigation about the validity of a will.
- Removal of a personal representative.
- Elective share or other marital claims against the South Carolina estate.

For more information on formal administration proceedings, generally, see [State Q&A, Probate: South Carolina: Formal Proceedings](#).

Probate Court Jurisdiction Over Estate Proceedings

In South Carolina, the Probate Court has jurisdiction over estate proceedings, including ancillary estate proceedings, subject to the removal right for certain proceedings as specified in the statute (S.C. Code Ann. §§ 62-1-302 and 62-4-201 to 62-4-303).

The Probate Code applies to:

- The affairs and estates of decedents, missing persons, and persons to be protected that are domiciled in South Carolina.
- The property of nonresidents located in South Carolina or property coming into the control of a fiduciary subject to the laws of South Carolina.
- Incapacitated persons and minors in South Carolina.
- Survivorship and related accounts in South Carolina.
- Trusts subject to administration in South Carolina.

(S.C. Code Ann. § 62-1-301.)

Rules Applicable to Estate Proceedings

The South Carolina Probate Code sets out the laws and procedures of probate and administration, specifies the laws of intestacy, which define parties that inherit absent a will, and includes the laws applicable to wills (S.C. Code Ann. §§ 62-1-100 to 62-4-401). The South Carolina Rules of Civil Procedure govern formal proceedings in the probate court (S.C.

Code Ann. § 62-1-304). Local courts may also have rules governing probate and administration.

Practitioners should also consult the South Carolina Judicial Department's website for the [South Carolina Probate Court Forms](#) (see Official Forms).

Preliminary Requirements for Ancillary Probate

Property Interest or Cause of Action for Wrongful Death Located in South Carolina

While most assets in an estate are generally located in a decedent's domicile, sometimes a decedent dies a resident of another state, while also owning property in South Carolina.

An ancillary proceeding is most commonly used when a non-domiciliary decedent dies owning real property in South Carolina. An ancillary proceeding may also be appropriate where:

- A nonresident dies owning certain personal property, such as a car or a boat, which is titled in South Carolina, in certain circumstances where an alternative process is not available or advisable (see [Alternatives to Ancillary Administration](#)).
- A decedent's estate has a cause of action for wrongful death against a South Carolina resident or a South Carolina corporation.

The ancillary proceeding empowers a fiduciary to gather and administer the South Carolina property under South Carolina law (S.C. Code Ann. §§ 62-3-103 and 62-4-205).

An ancillary proceeding is secondary to the estate proceeding in the decedent's state of domicile. In most situations, the bulk of the decedent's assets are administered in the estate proceeding in the decedent's state of domicile. However, an ancillary proceeding is necessary only for administration of the nonresident decedent's South Carolina probate estate (that is, the decedent's South Carolina property passing under the decedent's will and by intestacy), where there is no alternative transfer procedure is available (S.C. Code Ann. § 62-1-201(35) and see [Alternatives to Ancillary Administration](#)). An ancillary proceeding is not necessary also for a nonresident decedent's South Carolina property that either:

- Passes by title, such as a payable on death account.
- Passes by operation of law, such as real property held jointly with rights of survivorship.
- Is held in a trust.

Administration Required in State of Decedent's Domicile

In South Carolina, an ancillary probate is only granted where there is an actual estate proceeding pending in the decedent's state of domicile. The person:

- Offering the will for probate in an ancillary probate proceeding (usually, the personal representative in the domiciliary probate) must show proof that the will was admitted to probate in the decedent's state of domicile (S.C. Code Ann. § 62-3-303(d)).
- Seeking to open ancillary administration of an intestate estate (usually, the personal representative in the domiciliary administration) must file the appropriate paperwork and qualify as a South Carolina fiduciary to obtain Certificates of Appointment from the South Carolina court (S.C. Code Ann. § 62-3-308). For more information regarding obtaining Certificates of Appointment, see Appointment of Ancillary Personal Representative.

If there is no estate proceeding in the decedent's state of domicile, an individual cannot use the ancillary probate process to transfer the decedent's South Carolina assets. Rather, the individual must use a South Carolina probate or other permissible administration process under South Carolina law to transfer the decedent's South Carolina assets. For more information on probate and other estate administration proceedings, see [State Q&A, Probate: South Carolina](#).

Retaining a South Carolina Lawyer

When a nonresident dies owning property in South Carolina that is subject to an ancillary estate proceeding, the decedent's family or the fiduciary appointed in the decedent's state of domicile may hire a South Carolina lawyer to help administer the South Carolina property. The court does not require that a South Carolina lawyer be hired. However,

association with South Carolina counsel familiar with the ancillary probate process in South Carolina can be valuable. The South Carolina lawyer can provide assistance by:

- Filing the ancillary probate documents in the appropriate South Carolina county.
- Making all necessary court appearances.
- Assisting the ancillary fiduciary with the administration of the South Carolina property and the closing of the ancillary estate.

Venue for Ancillary Probate Proceeding

The probate court of any South Carolina county may exercise jurisdiction over the estate of a nonresident who dies owning property in South Carolina. However, proper venue is determined by the county or counties where the decedent owned property (S.C. Code Ann. § 62-3-201).

One of the first priorities in an ancillary probate proceeding is to determine the proper venue for the proceeding. This decision depends on whether the non-domiciliary died owning property in just one South Carolina county or in multiple counties.

Property in Single County

If the decedent owned property in only one county in South Carolina, the proper venue for the ancillary probate proceeding is the county where the property is located (S.C. Code Ann. § 62-3-201(a)(2)).

Property in Multiple Counties

If the decedent owned property in multiple counties in South Carolina, the proper venue for the ancillary probate proceeding is any county where any of the decedent's South Carolina property is located (S.C. Code Ann. § 62-3-201(a)(2)).

The county where an ancillary proceeding is first commenced retains jurisdiction. Any matter relating to the ancillary proceeding pending in any other county in South Carolina is transferred to the county where the proceeding is first commenced. However, the court may transfer the matter to another South Carolina probate court in the interest of justice. (S.C. Code Ann. § 62-1-303.)

Appointment of Ancillary Personal Representative

Certificates of Appointment

A proposed ancillary fiduciary must petition the probate court with jurisdiction for Certificates of Appointment showing the ancillary fiduciary's appointment and authority to act for the nonresident decedent's South Carolina estate (S.C. Code Ann. §§ 62-3-301(a)(2)(i) and 62-3-303(d)). The Certificates of Appointment are certified by the probate court, contain an official court seal, and provide evidence that the ancillary fiduciary's appointment is effective (S.C. Code Ann. § 62-3-103).

Requirements of Petitioner for Certificates of Appointment in South Carolina

To properly petition the court for Certificates of Appointment, a petitioner must:

- File [Form 300ES](#).
- File exemplified copies of the probate file from the home state (that is, file in South Carolina copies of the probate file filed with the court in the home state). The South Carolina court generally wants to see evidence of the domiciliary appointment, an authenticated copy of the will, if there is any will, and who are the beneficiaries. Certain judges may want to see an inventory or other documents from the probate file.
- Qualify as personal representative in South Carolina (see [Qualification as a South Carolina Fiduciary](#)).

(S.C. Code Ann. §§ 62-3-102, 62-3-103, and 62-4-204.) The petitioner petitions for Certificates of Appointment as part of a petition to administer the ancillary estate in South Carolina (see [Opening an Ancillary Probate](#)).

Qualification as a South Carolina Fiduciary

The requirements for qualification as a fiduciary (personal representative) in an ancillary estate administration proceeding are the same as in an estate proceeding for a resident decedent (S.C. Code Ann. § 62-4-207).

An individual is not eligible to receive Certificates of Appointment if the individual is either:

- Under 18 years of age.
- A person the court finds unsuitable in formal proceedings (for example, persons who are mentally incompetent in any degree or convicted felons).

(S.C. Code Ann. § 62-3-203(e).) For more information on qualification as a fiduciary in South Carolina, see [State Q&A, Probate: South Carolina: Qualification as Fiduciary](#).

Jurisdiction over Personal Representative

The probate court where the petitioner files the ancillary probate petition has jurisdiction over the fiduciary appointed as personal representative for the ancillary estate. The personal representative submits personally to the jurisdiction of South Carolina courts in any estate proceeding by taking any action as a personal representative which would have given South Carolina jurisdiction over the representative as an individual. (S.C. Code Ann. § 62-4-301.) The personal representative must file [Form 300ES](#) before receiving a Certificate of Appointment and must consent to the jurisdiction of the Probate Court (S.C. Code Ann. § 62-4-301).

Fiduciary Bond

A fiduciary bond is like an insurance policy to ensure against fiduciary wrongdoing. Bond requirements in ancillary proceedings are generally the same as they are in other estate proceedings (and the filing of the bond is not required unless the court, in its discretion, orders it) (S.C. Code Ann. § 62-4-204). For more information on bond in estate proceedings, see [State Q&A, Probate: South Carolina: Question 8](#).

Official Forms

Practitioners should consult the South Carolina Judicial Department's [website](#) for the South Carolina Probate Court Forms to use when administering an ancillary probate estate in South Carolina. The proper forms must be used for the probate court to act.

Opening an Ancillary Probate

Parties Filing the Petition for Ancillary Probate

A petition for ancillary probate may be made by:

- Any person interested in the decedent's estate (that is, any person having a property right in or claim against the estate which may be affected by the proceeding, and any persons having priority for appointment as personal representative), including the domiciliary personal representative.
- A creditor.
- A public administrator.
- A county treasurer.

(S.C. Code Ann. §§ 62-1-201(23), (33), 62-3-203, and 62-3-303(a)(3).)

Contents of the Petition for Ancillary Probate

The petition for ancillary probate is the same as the one used for opening any South Carolina estate. [Form 300ES](#) must accompany the required exemplified documents (see Requirements of Petitioner for Certificates of Appointment in South Carolina). For more information on information included in estate petition applications, see [State Q&A, Probate: South Carolina: Information Included in Applications and Petitions](#).

Notice Requirement

Notice requirements are the same for ancillary probate as for any other estate proceeding. For more information on notice for opening an estate proceeding, see [State Q&A, Probate: South Carolina: Question 6](#).

Ancillary Probate Without Certificates of Appointment

In South Carolina, a petitioner can request ancillary administration without requesting appointment of a personal representative. Further, if there is no South Carolina estate administration proceeding (or a related pending petition), a personal representative appointed in the nonresident decedent's domiciliary estate administration can file authenticated copies of appointment in the South Carolina county in which property is located and act in certain instances without a certificate of appointment. (S.C. Code Ann. §§ 62-3-301(a)(7), 62-4-204, and 62-4-205).

The personal representative in the domiciliary estate administration may do this if, for example,

title must be transferred only on South Carolina real property, but no fiduciary needs to be appointed in South Carolina to accomplish this transfer. If the real property is being distributed to the intestate heirs or to devisees under the will, the petitioner files exemplified copies of the original probate file with the probate court where the real property is located and the personal representative from the domiciliary state files a deed of distribution at the local Register of Deeds Office and Probate Court releasing the property to the heirs or devisees. Nothing further is needed for this type of transfer. The estate is still subject to all regular creditor claim statutes (see Payment of Claims).

Proof of Will

The petitioner must prove the will is being lawfully administered in the state where the decedent was domiciled at the decedent's death before the probate court can grant ancillary administration. The petitioner proves this lawful domiciliary administration in the state of domicile by filing exemplified copies of the home state probate documents. (S.C. Code Ann. §§ 62-3-303(d) and 62-4-301.)

Administration and Distribution of an Ancillary Estate

Powers and Duties of Ancillary Fiduciary

An ancillary fiduciary is generally under the same obligations and has the same responsibilities, powers, and duties (and is held to the same standard of care) as a fiduciary of a South Carolina domiciliary estate.

The job of the ancillary fiduciary generally is to:

- Gather the assets in South Carolina.
- Pay any administration expenses and any claims arising from a creditor domiciled or doing business in South Carolina.
- Pay any tax liability arising from the South Carolina property.

(S.C. Code Ann. §§ 62-4-205 and 62-4-207.)

For more information on fiduciaries of South Carolina domiciliary estates, see [State Q&A, Probate: South Carolina: Questions 10](#) and 11.

Payment of Expenses and Claims

One of the primary jobs of the ancillary fiduciary is to pay any:

- Administration expenses from the ancillary proceeding.
- Valid claims.

Payment of Expenses

The ancillary fiduciary should pay, generally from the South Carolina assets, any legitimate expenses incurred during the ancillary administration of the decedent's estate. These expenses can include:

- Court fees.
- Attorneys' fees for any South Carolina attorney involved in the ancillary proceeding.
- Any expenses associated with the administration of the South Carolina property, such as appraisal fees and insurance expenses.

(S.C. Code Ann. §§ 62-3-715(16) and 62-4-205.)

Payment of Claims

The South Carolina creditor's claim process is the same for ancillary administration as it is for a domiciliary administration. The ancillary fiduciary should pay any valid and timely claims creditors bring against the decedent's ancillary estate. For more information on the creditor's claim process, see [State Q&A, Probate: South Carolina: Considerations for Creditor Claims](#).

Other Ancillary Estate Processes and Distribution of Assets

As with a domiciliary personal representative, the ancillary personal representative must:

- File an inventory, accounting, and proposal for distribution.
- Pay off all expenses of administration of the ancillary estate and claims of South Carolina creditors.
- Distribute the assets to the beneficiaries and close the estate.

These are the same processes as in a South Carolina domiciliary estate administration (see [State Q&A, Probate: South Carolina](#)).

Alternatives to Ancillary Administration

Summary Ancillary Administration

An ancillary administration may be conducted as a summary administration, if it fulfills certain statutory requirements. The personal representative can immediately distribute the assets and file a Verified Statement to Close the Estate ([Form 421ES](#)) if either:

- The personal representatives are the sole heirs or devisees of the estate.
- The value of the ancillary estate is less than \$25,000 (less liens and encumbrances), after the personal representative was appointed and published notice to creditors, in South Carolina.

(S.C. Code Ann. §§ 62-3-1203 and 62-3-1204.)

Ancillary Administration of Personal Property by Affidavit

There may be no need for an ancillary administration for certain ancillary estates of small value. An Affidavit of Collection of Personal Property can be filed with the probate court ([Form 420ES](#)) if:

- The total value of the decedent's net estate, after subtracting the value of liens and encumbrances, is no greater than \$25,000.
- At least 30 days have passed since the decedent's death.
- There are no pending applications or petitions for probate in South Carolina.

(S.C. Code Ann. §§ 62-3-1201 and 62-3-1202.) This affidavit process cannot be used to transfer real property in South Carolina. For more information on ancillary administration of South Carolina personal property by affidavit, see [State Q&A, Probate: South Carolina: Affidavit of Collection of Personal Property](#).

Expedited Process for Domiciliary Foreign Personal Representative

If a court in the state of the nonresident decedent's domicile appointed a personal representative to administer the decedent's estate and there is no local South Carolina estate administration pending for the decedent, that representative can use an expedited

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affidavit procedure, sixty days after a nonresident decedent's death, to collect either:

- South Carolina personal property.
- A South Carolina debt, obligation, stock, or cause of action belonging to the decedent's estate.

(S.C. Code Ann. §§ 62-4-201 to 62-4-207.) Payment or delivery made in good faith based on the affidavit and proof of appointment provided by the representative releases the debtor or person with possession to the same extent as if payment or delivery was made to a local personal representative ((S.C. Code Ann. § 62-4-202).

However, payment may not be made under this process if a resident creditor gave written notice to the debtor or person in possession that the

debt should not be paid or the property delivered to the representative (S.C. Code Ann. § 62-4-203). In that case, or where a debtor or person in possession refuses to pay or deliver the property to the representative under this process, an ancillary administration may need to be opened to administer the South Carolina property.

Even if this affidavit process is available, an interested person or personal representative in the domiciliary estate administration also may prefer to open an ancillary administration and settle the ancillary administration through the courts in certain circumstances, such as if there are potential:

- Disputes between beneficiaries.
- Significant creditor issues.

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