

Probate: South Carolina

by Melody J.E. Breeden, Turner, Padgett, Graham and Laney, P.A., and Practical Law Trusts & Estates

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A Q&A guide to the laws of probate in South Carolina. This Q&A addresses state laws and customs that impact the process of an estate proceeding, including the key statutes and rules related to estate proceedings, the different types of estate proceedings available in South Carolina, and the processes for opening an estate, appointing an estate fiduciary, administering the estate, handling creditor claims, and closing the estate. Answers to questions can be compared across a number of jurisdictions (see Probate: State Q&A Tool).

Key Statutes and Rules

1. What are the state laws and rules that govern estate proceedings?

The South Carolina Probate Code (S.C. Code Ann. §§ 62-1-100 to 62-8-403) governs:

- Estates (S.C. Code Ann. §§ 62-1-100 to 62-4-401).
- Trusts and nonprobate transfers (S.C. Code Ann. §§ 62-6-101 to 62-7-1106).
- Wills and the intestate succession (S.C. Code Ann. §§ 62-2-101 to 62-2-1090).
- Other miscellaneous sections relating to the administration of estates including, for example:
 - the Uniform Simultaneous Death Act (S.C. Code Ann. §§ 62-1-500 to 62-1-509);
 - guardians and conservators (S.C. Code Ann. §§ 62-5-101 to 62-5-716)

The South Carolina Rules of Civil Procedure (SCRCP Rule 1 to 86) apply to formal proceedings in the probate court (S.C. Code Ann. § 62-1-304).

2. What court has jurisdiction over estate proceedings in your state?

In South Carolina, the probate court has exclusive original jurisdiction over most estate proceedings. However, the probate court has concurrent

jurisdiction with the family court in certain estate proceedings involving paternity, common-law marriage, and interpretation of marital agreements in connection with estate, trust, guardianship, or conservatorship actions pending before the probate court. (S.C. Code Ann. § 62-1-302.)

Types of Estate Proceedings

3. What are the different types of probate or other estate proceedings or processes for transferring a decedent's assets at death?

The main types of estate proceedings in South Carolina are:

- Informal proceedings.
- Formal proceedings.

Informal Proceedings

Informal proceedings are the most common estate proceedings and include:

- **Informal probate of will.** This is the informal proceeding for admitting a will to probate and appointing a personal representative to administer a decedent's estate without a hearing when a decedent dies with a valid will (S.C. Code Ann. §§ 62-3-301 to 62-3-311).

- **Informal probate in intestate estate.** This is the informal process of probating an estate and appointing a personal representative without a hearing when a decedent dies without a will (S.C. Code Ann. §§ 62-3-301 to 62-3-311).
- **Affidavit of collection of personal property.** An Affidavit of Collection of Personal Property can be filed with the probate court ([Form 420ES](#)) to collect the decedent's personal property if certain statutory requirements are met (S.C. Code Ann. §§ 62-3-1201 and 62-3-1202). The Affidavit does not appoint a personal representative and only applies to the personal property listed on the Affidavit. If there is a will, Application for Informal Probate of Will or Appointment/Petition for Formal Testacy or Appointment ([Form 300ES](#)) is also required. (See Question 19: Affidavit of Collection of Personal Property.)
- **Summary administration.** After the court appoints a personal representative and the representative publishes notice to creditors in an informal administration, the representative can immediately distribute the assets and file a Verified Statement to Close the Estate ([Form 421ES](#)) if:
 - the personal representative is the sole heir or devisee; or
 - if the value of the estate (not including any exempt property, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the decedent's last illness) is less than \$25,000.(S.C. Code Ann. §§ 62-3-1203 and 62-3-1204; see Question 19: Summary Administration).
- **Administration under Part 5.** A single *in rem* proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court (that is, when a representative wants to ensure every stop has notice and a hearing), which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding (S.C. Code Ann. §§ 62-3-501 to 62-3-505, and cmts.; see Question 19: Administration Under Part 5). This procedure is rarely used.
- **Ancillary probate or administration.** This is the estate proceeding used if a non-South Carolina resident dies leaving real property in South Carolina in the name of the non-resident decedent. Ancillary

probate or administration is conducted much like a regular probate (generally informal, but formal where informal proceedings are not available) (S.C. Code Ann. §§ 62-3-101 to 62-3-1312 and 62-4-201 to 62-4-207). There is also an expedited procedure for collection of a non-resident decedent's personal property located in South Carolina if certain criteria are met (see Question 19: Ancillary Probate or Administration).

Formal Proceedings

In South Carolina, formal proceedings occur when informal probate is unavailable to administer a decedent's estate. Formal testacy proceedings generally occur to determine if there is a valid will (for example, when it is unclear if the original was lost or destroyed, to determine if a will was properly executed, or if there is a question about the decedent's capacity when executing the will) (S.C. Code Ann. §§ 62-3-311 and 62-3-401.)

Formal proceedings are the formal process of appointing a personal representative and admitting a will to probate or determining that an estate is intestate. Formal proceedings are less common than informal proceedings and are litigated proceedings which require a [Summons](#) and [Petition](#). (S.C. Code Ann. §§ 62-3-401 to 62-3-414.)

Opening the Estate

4. What is the typical initial filing process for opening an estate? Specifically, please discuss:

- How original wills are handled.
- Whether filing typically occurs by mail, e-filing, or in person and common practices for the most common methods.
- Documents typically submitted to the court with the initial filing.
- Any additional practical advice regarding the initial process for opening an estate.

Filing Original Wills

In South Carolina, after the testator dies, the person in custody of the original will must deliver it within 30 days of the testator's death to either:

- The probate court judge.
- The personal representative of the estate, who then must deliver it to the judge.

(S.C. Code Ann. § 62-2-901(a).) Any person intentionally or fraudulently destroying, concealing, or failing to deliver the will to the probate court judge is liable to any person for resulting damages (S.C. Code Ann. § 62-2-901(b)).

Once the probate judge receives the will and a proper application requesting the court to probate the will, the judge must determine if the document is a valid will and whether it can be informally probated (see Question 5).

Filing Methods

The documents necessary to open an estate are filed by mail or in person. Electronic filing generally is not available in the probate court. However, the Charleston County Probate Court is currently involved in a [Pilot Program](#) for electronic filing.

Documents Submitted with Initial Filing

The probate process in South Carolina is form driven. The forms can be found on [South Carolina Judicial Branch: Court Forms](#). The proper forms must be filed for the probate court to act.

Documents with Initial Filing for Informal Proceeding

For an informal proceeding, the initial filing is an Application for Informal Probate of Will or Appointment ([Form 300ES](#)). The probate court cannot act on a will without an accompanying application (S.C. Code Ann. § 62-3-308).

All of the following documents are filed with the Informal Application for Probate:

- The original will and any codicils.
- A certified copy of decedent's death certificate.
- Renunciations of Right to Administer/Waiver of Bond ([Form 302ES](#)) for intestate estates.
- Appropriate filing fee to open the estate (and in some counties, the fee for publication in a newspaper).

(S.C. Code Ann. §§ 62-3-301 and 62-3-303; see Question 5: Application for Informal Probate or

Administration.) Some probate judges require the filing of the obituary to open an estate informally, but this is not required by statute. Counsel should check the court rules and procedures.

Documents with Initial Filing for Formal Proceeding

For a formal proceeding, a Summons ([Form SCCA 401PC](#)) is required with a \$150 filing fee with the Form 300ES checked appropriately, in addition to a Petition ([Form 300ES](#)) and the documents necessary for an informal application (S.C. Code Ann. § 62-3-402). The petitioner must also properly serve the Summons under Rule 4, SCRCP with Notice of Hearing sent to all interested parties. (S.C. Code Ann. §§ 62-3-401 to 62-3-403.)

If the decedent died with a will (testate), but the original will cannot be located, the estate must be formally probated, with a summons and petition, and all interested parties must be served (S.C. Code Ann. §§ 62-3-301(a)(2) and 62-3-401). If a valid original will exists but cannot be found, the petition must either:

- Include a copy of the will.
- State the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable but not revoked.

(S.C. Code Ann. § 62-3-402(a).)

For more information on:

- Petitions for formal probate or administration, see Question 5: Petition for Formal Probate or Administration.
- Notice for informal or formal probate or estate administration, see Question 6.

Requirements for Informal Probate and Appointment

Informal Probate of Will

To informally probate a will, the court must determine whether:

- The application is complete.
- The applicant made an oath or affirmation that information in the application is correct to the best of the applicant's knowledge and belief.
- The applicant appears to be an interested person.

- Venue is proper, based on the statements in the application.
- The court has the original, unrevoked will.
- The applicant gave notice under S.C. Code Ann. § 62-3-204 (see Question 6: Who is Entitled to Receive Notice).
- The time limit for original probate has not expired (see Statutes of Limitation).

(S.C. Code Ann. § 62-3-303(a).)

Informal probate is not available if either:

- A personal representative generally was appointed, if (in a testate administration) another will of the decedent generally was the subject of a previous probate order (S.C. Code Ann. § 62-3-303(b)).
- If there are multiple testamentary documents the latest of which does not expressly revoke the earlier (S.C. Code Ann. § 62-3-304).
- The court is not satisfied that a will should be informally probated. In this instance, the court may decline the informal probate application and a formal probate proceeding may be required to probate the will (S.C. Code Ann. § 62-3-305).
- The decedent died with a will, but the original will cannot be located (S.C. Code Ann. § 62-3-301(a)(2)).

In an informal administration, the probate court, by order, generally must declare an original will valid for the will to be effective to prove the transfer of property or nominate a personal representative (S.C. Code Ann. § 62-3-102).

Informal Appointment

To informally appoint an administrator, the court must generally make the same determinations as in an informal probate of a will except that the court does not possess an original, unrevoked will. However, for any appointment that relates to a will (which is not the case in an intestate administration), that will must have been formally or informally probated, except for appointment of a special administration. (S.C. Code Ann. § 62-3-308(a); see Question 7: Appointing a Fiduciary in Urgent or Unusual Circumstances.)

To act as personal representative, the probate court must:

- Appoint the person.
- Issue the person Certificates of Appointment.

(S.C. Code Ann. § 62-3-103.) A personal representative must qualify and may begin administering the estate only on issuance of letters by the court (S.C. Code Ann. § 62-3-103; see Question 7: Qualification as Fiduciary). In South Carolina, these letters are called Certificates of Appointment.

For more information on the requirements for an application for informal probate or administration, see Question 5: Application for Informal Probate or Administration.

Statutes of Limitation

No informal probate or appointment proceedings or formal testacy or appointment proceedings related to a decedent's estate can occur more than ten years after the decedent's death unless the estate was previously probated or a personal representative was previously appointed (S.C. Code Ann. §§ 62-3-106 and 62-3-108(A)).

To clear title to a property for an estate in which this statute of limitations has expired, the only remedies are either:

- An action to quiet title.
- An action to determine heirs.

(S.C. Code Ann. § 62-3-108(B).)

The running of any statute of limitations on a cause of action belonging to the decedent that is not barred at the decedent's date of death is suspended for eight months after decedent's death but resumes after that unless otherwise tolled (S.C. Code Ann. § 62-3-109).

5. Who can petition to open an estate and what information is required for the petition?

Standing to Petition to Open Estate

In South Carolina, any interested person in an estate can petition to open the estate by filing for probate or appointment, or both (S.C. Code Ann. §§ 62-3-301(1) and 62-3-401; see [Form 300ES](#)). Interested persons in an estate proceeding include:

- Heirs.
- Devisees.
- Children.

- Spouses.
- Creditors.
- Beneficiaries.
- Any others having a property right or claim against the estate that may be affected by the proceeding.

(S.C. Code Ann. § 62-1-201(23).)

The individual named as personal representative in the decedent's will is typically the person filing to open an estate.

If there is no will, an intestate heir or other interested person may petition to open the estate. Most estates are opened informally. If the probate court denies informal probate or administration, then formal probate or administration may be necessary (see Question 4: Requirements for Informal Probate and Appointment).

Application for Informal Probate or Administration

Applications for informal probate of a will or an informal administration in intestacy, with or without a request for appointment of a personal representative, must:

- Be directed to the court.
- Request a judicial order.
- Contain further statements required by statute.

(S.C. Code Ann. § 62-3-301; see [Form 300ES](#).)

For more on the information included in probate petition applications, see Information Included in Applications and Petitions.

Petition for Formal Probate or Administration

Petitions for formal probate of a will or a formal administration in intestacy, with or without a request for appointment of a personal representative, use the same form and generally requires similar information as informal probate or administration, with a few additional boxes checked ([Form 300ES](#)). However, formal probate and administration petitions also require a summons and a hearing. (S.C. Code Ann. §§ 62-3-402 and 62-3-403.)

A petition for formal probate or administration must:

- Request judicial findings and an order:
 - regarding the decedent's testacy in relation to an instrument that may or may not have been

informally probated and determining the heirs, if testate; or

- that the decedent left no will and determining the heirs, if intestate.
- Contain certain required statements under S.C. Code Ann. § 62-3-301(a), (b) (for testate and intestate administrations, respectively).
- State:
 - if testate, whether the original of the decedent's last will is in the possession of the court or is included with petition. If the original will is neither in the possession of the court nor is included with the petition and no authenticated copy of a will probated in another jurisdiction is included with the petition, the petition also must state the contents of the original will and indicate that it is lost, destroyed, or otherwise unavailable; or
 - if intestate, that the decedent left no will (or that the original will is lost, destroyed, or otherwise unavailable, and the contents are unknown).
- State, if intestate, whether an administration under Part 5 (S.C. Code Ann. §§ 62-3-501 to 62-3-505) is sought (administration under Part 5 is uncommon).

(S.C. Code Ann. § 62-3-402; see [Form 300ES](#).)

Formal petitions must include additional informal, similar to informal applications.

Information Included in Applications and Petitions

Applications for informal, or petitions for formal, probate of a will or appointment include:

- A statement of the applicant's interest in the estate (this includes the applicant's relationship to the decedent and the applicant's name address, telephone numbers, and email address (see [Form 300ES](#)).
- The decedent's name, age, date of birth, and date of death.
- A statement that:
 - the decedent was domiciled in the county at date of death;
 - shows venue in the county is proper if the decedent was not domiciled in the state at time of death; or
 - otherwise shows why the venue is proper.

- Names and addresses of:
 - beneficiaries under the will, if any;
 - the decedent’s spouse, children, intestate heirs (regardless of whether the decedent died intestate); and
 - the year of birth of the individuals on the form.
- Information about:
 - marital status, parental status, guardianship, other initiated or pending probate proceedings; and
 - the nature and extent of the decedent’s assets.
- Identifying information concerning the will and any codicils.
- A statement:
 - identifying and indicating the name and address of any personal representative of the decedent proposed to be appointed; and
 - with information concerning priority of appointment for the proposed personal representative and others.
- A statement indicating whether the applicant received a demand for notice or is aware of any demand for notice of any related probate or appointment proceeding filed in South Carolina or elsewhere.
- A statement that the time limit for informal probate is not expired.
- For informal probate of a will, that:
 - the original will is in the court’s possession or accompanies the application (or that an authenticated copy of a will probated in another jurisdiction accompanies the application;
 - the applicant, to the best of the applicant’s knowledge, believes the will to be validly executed; and
 - after exercising reasonable diligence, the applicant is not aware of any instrument revoking the will and believes the instrument that is the subject of the application is the decedent’s last will.
- The applicant’s signature and verification.

(S.C. Code Ann. §§ 62-3-301 and 62-3-402(a)(2) ; see [Form 300ES](#).)

If appointment of a personal representative is sought, there is a box to check on [Form 300ES](#) to indicate this and certain additional statements

are required in certain circumstances (S.C. Code Ann. §§ 62-3-301(3) to (6)).

The court may probate a will without appointing a personal representative to preserve the ten-year time period to probate an estate (S.C. Code Ann. § 62-3-301(7)). At that time, there may be no known assets that need to be administered. However, this filing preserves the ability to administer the estate at a later date if assets are later discovered.

6. Who does the petitioner have to provide notice to during the estate opening process? Specifically, please discuss:

- Who is entitled to receive notice?
- What notice is required when an estate is open?
- Who has standing to object to the petition for probate or administration?

Who is Entitled to Receive Notice

Those Entitled to Notice of the Application

In South Carolina, the applicant for informal probate must give notice of the application to both:

- Any interested person demanding it under statute.
- Any previously appointed personal representative of the decedent whose appointment is not yet terminated.

(S.C. Code Ann. §§ 62-3-306(a) and 62-3-403(a).)

Any interested person seeking notice of any filing or subsequent order for a decedent’s estate may file a demand for notice with the court at any time after the death of the decedent stating:

- The decedent’s name.
- The nature of the interested person’s interest in the estate.
- The interested person’s address or that of the interested person’s attorney.

(S.C. Code Ann. §§ 62-1-401 and 62-3-204.) Interested persons for these purposes includes:

- Heirs.
- Devisees.

- Children.
- Spouses.
- Creditors.
- Beneficiaries.
- Any others having a property right or claim against the estate which may be affected by the proceeding.

(S.C. Code Ann. § 62-1-201(23).)

For applications for informal probates:

- Seeking appointment of a personal representative, notice typically is provided only after the appointment of the representative and not on filing of the application.
- Not seeking appointment of a personal representative, the court may still require notice to be sent to persons as if a personal representative was appointed.

(See Those Entitled to Notice of Appointment and Informal Probate Notice.)

Those Entitled to Notice of the Petition

Formal probate proceedings require that the petitioner serve a Summons ([Form SCCA 401PC](#)) and Petition ([Form 300ES](#)) under South Carolina Rules of Civil Procedure on all devisees named in the will and all intestate heirs (S.C. Code Ann. §§ 62-3-401 and 62-3-402).

After the court sets the hearing date, the petitioner must send Notice of Hearing ([Form 326ES](#)) to all interested parties (S.C. Code Ann. §§ 62-1-401 and 62-3-403(a)). This notice of hearing is separate from the notice required for a summons required for a petition. However, sometimes the court may provide a hearing date when the petitioner files the petition. In those cases, the petitioner can send these separate notices together. The petitioner should check with the probate court in the county of filing since some probate courts do not provide a hearing date until the petitioner can provide proof of service.

Those Entitled to Notice of the Appointment

Within 30 days after the court appoints a personal representative in informal or formal proceedings, the applicant or petitioner must give notice, as provided in the Information to Heirs and Devisees ([Form 305ES](#)), to the following persons:

- The intestate heirs (the surviving spouse, children, and other heirs of the decedent):
 - regardless of whether the decedent died intestate; and
 - as determined if the decedent died intestate.
- The devisees (the beneficiaries named in the will).
- Any personal representative whose appointment is not terminated, named in any will that:
 - is or was probated or offered for probate in the county; or
 - is known by the petitioner to have been probated or offered for informal or formal probate elsewhere.

(S.C. Code Ann. § 62-3-705.)

Notice Required to Open Estate

Informal Probate Notice

No notice generally is required on the filing of an application to informally probate a will or open an intestate estate, unless both:

- Appointment of a personal representative is sought.
- There is a person with an equal or superior right to appointment that has not waived priority in writing with the court.

(S.C. Code Ann. § 62-3-310.) If the person seeking to open an intestate estate has a right of priority that is equal to or inferior to any other person, all those with equal or higher priority to open the intestate must file a Renunciation of Right to Administer ([Form 302ES](#)). If the renunciations cannot be obtained, the applicant must give notice to all persons with an equal or superior right of priority of appointment. If there is no objection within 30 days from the mailing of the application, the court may appoint the applicant as appointed personal representative. However, the court may require a hearing in this circumstance. (S.C. Code Ann. § 62-3-310; see Standing to Object.)

Once the court appoints a personal representative, the personal representative must timely:

- Send a Notice to Heirs and Devisees ([Form 305ES](#)) notifying those persons of the appointment (S.C. Code Ann. § 62-3-705; see Those Entitled to Notice of the Appointment).
- Publish a notice to creditors (see Question 13).

If the application for informal probate does not seek appointment of a personal representative, the court may still require these notices, though South Carolina statute does not clearly require the Notice to Heirs and Devisees in this circumstance.

Formal Probate Notice

Formal probate proceedings require that the petitioner serve a Summons ([Form SCCA 401PC](#)) and Petition ([Form 300ES](#)) under South Carolina Rules of Civil Procedure on all devisees named in the will and all intestate heirs (S.C. Code Ann. §§ 62-3-401 and 62-3-402). Each respondent has 30 days to respond and there must be proper notice of any hearing.

After the court sets the hearing date, a Notice of Hearing ([Form 326ES](#)) must be sent to all interested parties (S.C. Code Ann. § 62-1-401). This notice of hearing is separate from the notice required for a summons required for a petition. However, sometimes the court can provide a hearing date at the time the petitioner files the petition. The petitioner should check with the court in the filing county to see if the court first requires proof of service. In those cases, the petitioner can send these separate notices together.

Manner of Giving Notice

The applicant in an informal probate or petitioner in a formal probate must give all notices required to open an estate either:

- By mailing a copy of the notice at least 20 days before the time set for the hearing by certified, registered, or ordinary first-class mail addressed to the party being notified to:
 - the address given in the applicant’s demand for notice, if any; or
 - the party’s office or place of residence, if known.
- By delivering a copy of the notices to the person being notified personally at least 20 days before the time set for the hearing.
- By publishing a copy as required by law for the publication of a summons for an absent defendant in the court of common pleas if:
 - the address or identity of any person is not known; and
 - cannot be determined with reasonable diligence.

(S.C. Code Ann. § 62-1-401(a).)

The court, for good cause shown, may provide for a different method or time for giving notice (S.C. Code Ann. § 62-1-401(b)). The personal representative generally must provide proof of the giving of proper notice on or before any required hearing, and file that proof in the proceeding (S.C. Code Ann. § 62-1-401(c)).

Standing to Object

Any party (generally, interested parties) to a formal proceeding opposing:

- The probate of a will for any reason must file a pleading stating the party’s objections to probate of the will (S.C. Code Ann. § 62-3-404).
- The appointment of a personal representative may object (generally by filing a pleading or by appearing at the hearing to appoint the representative and objecting in person) (S.C. Code Ann. § 62-3-203(b)).

Appointing an Estate Fiduciary

7. How is the person in charge of the estate (referred to here as the fiduciary) appointed? in particular please consider:

- The procedure for appointing a fiduciary when the decedent died with a will.
- The procedure for appointing a fiduciary when the decedent died without a will.
- The procedure for appointing a fiduciary in urgent or unusual circumstances.
- Any restrictions on a person’s eligibility to act as fiduciary, including whether an attorney who prepares a will for a client can act as the fiduciary.

In South Carolina, the person in charge of an estate is called the personal representative, regardless of whether it is a testate, intestate, formal, or informal probate (S.C. Code Ann. § 62-1-201(33)).

Appointing a Fiduciary Where Decedent Died With a Will

When a decedent dies with a will (testate), the person seeking appointment (generally the person named as personal representative in the will) files an application

or petition that includes certain required information and the probate court:

- Requires a hearing in a formal proceeding to appoint the personal representative (the estate fiduciary).
- Appoints the personal representative without a hearing in an informal appointment, if the application for probate is in order.

(See Question 5.) The probate court appoints the person with priority as determined by the will admitted to probate, including a person nominated by a power of nomination conferred in the will or if there is no such qualified person, under the statutory order of priority for appointment as if decedent died without a will (S.C. Code Ann. § 62-3-203(a)).

Appointing a Fiduciary Where Decedent Died Without a Will

To appoint a fiduciary where the decedent died without a valid will (intestate), the person seeking appointment submits the required application or petition for adjudication and appointment (see Question 5).

This petition process is typically completed informally by filing both:

- An Application for Appointment ([Form 300ES](#)).
- A Renunciation of Right to Administer ([Form 302ES](#)) of anyone with an equal or higher priority of appointment.

The probate court then appoints the personal representative in the informal proceeding. (S.C. Code Ann. § 62-3-301.)

If a formal proceeding is necessary, the petitioner must file and serve a summons along with the petition on all interested parties and the court must hold a hearing to appoint a personal representative (S.C. Code Ann. §§ 62-3-401 and 62-3-414).

The court appoints a qualified and available personal representative in an intestate proceeding, whether informal or formal, in the following statutory order:

- The surviving spouse of the decedent who is a devisee of the decedent.
- The decedent's other devisees.
- The decedent's surviving spouse.
- Other heirs of the decedent determined as if the decedent died intestate (regardless of whether the

decedent died intestate) with heirs that may have qualified under the preceding categories being treated as having predeceased the decedent.

- 45 days after death, creditors complying with S.C. Code Ann. § 62-3-804(1)(b) (see Question 14: Presentation of Claims).
- Four months after death, on application by the [South Carolina Department of Revenue](#), a person suitable to the court.
- Unless the decedent expresses a contrary intent in the decedent's will, a person with priority may nominate another, with the same priority as the person making the nomination, except that a person nominated by the testator to serve as personal representative has a higher priority than a person nominated under this rule.

(S.C. Code Ann. § 62-3-203(a); see Qualification as Fiduciary.)

Appointing a Fiduciary in Urgent or Unusual Circumstances

The court may informally appoint a special administrator on application of any interested party when necessary either:

- To protect the estate of a decedent before appointment of a personal representative or if a previous appointed was terminated under S.C. Code Ann. § 62-3-609 (by the personal representative's death or appointment of a conservator or guardian for the personal representative).
- For an estate creditor to commence any proceeding under S.C. Code Ann. § 62-3-803, regarding barred claims against the decedent's estate.
- To take appropriate actions involving estate assets.

(S.C. Code Ann. § 62-3-614(1).)

The court may formally appoint a special administrator on the petition of any interested person and on finding, after notice and hearing, that appointment is necessary to either:

- Preserve the estate.
- Secure the estate's proper administration including its administration in circumstances where a general personal representative cannot or should not act.

(S.C. Code Ann. § 62-3-614(2).) If it appears to the court that an emergency exists, the court

may order appointment without notice (S.C. Code Ann. § 62-3-614(2)).

If the court appoints a special administrator pending the probate of a will for which there is a pending application or petition, the court must appoint the person named as executor if available and qualified. Otherwise, the court may appoint any proper person as special administrator. (S.C. Code Ann. § 62-3-615.)

The special administrator may act only on the terms as the court directs (S.C. Code Ann. § 62-3-617). The appointment terminates as provided under the order of appointment or on the appointment of a general personal representative, except as otherwise provided by statute (for example, by the special administrator's death or disability or removal for cause) (S.C. Code Ann. § 62-3-618).

Qualification as Fiduciary

Before receiving certificates of appointment, a personal representative can qualify for service by filing with the probate court both:

- Any required bond (see Question 8).
- A statement of acceptance of the duties of the office (included in [Form 300ES](#)).

(S.C. Code Ann. § 62-3-601.) By accepting appointment as personal representative, the individual is personally submitting to the probate court's jurisdiction in any estate-related proceeding (S.C. Code Ann. § 62-3-602).

No person is qualified to be a personal representative who:

- Is under the age of 18.
- The court determines in formal proceedings is unsuitable.
- For an estate of any person domiciled in South Carolina at that person's death, is either:
 - a corporation created in another state of the US or by any foreign state, kingdom, or government;
 - a corporation created under US law and not authorized to do business in South Carolina; or
 - an officer, employee, or agent of these foreign corporations, whether the officer, employee, or agent is a resident or a nonresident of South Carolina, if the officer, employee, or agent is acting as personal representative on behalf of the corporation.

- A probate judge for an estate of any person in the judge's jurisdiction. However, a probate judge may serve as a personal representative of the estate of a family member if the service does not interfere with the proper performance of the judge's official duties and the estate must be transferred to another county for administration. In this context, family member means a spouse, parent, child, brother, sister, aunt, uncle, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild.

(S.C. Code Ann. § 62-3-203(e).)

Drafting Attorney as Personal Representative

South Carolina does not preclude by statute the attorney drafting a client's will, or otherwise representing a client, from serving as personal representative of the client's estate. However, the attorney must:

- Be careful to avoid conflicts of interest.
- Provide the client with sufficient information so that the client can make an informed decision before naming the drafting attorney as personal representative of the client's estate. Out of an abundance of caution, counsel may want to obtain the testator's informed consent in writing to this arrangement.

(SCACR, Rules of Prof. Conduct, Rules 1.4, 1.7, and 1.8.)

8. Is a fiduciary bond required, and if so, in what circumstances?

Except as required under S.C. Code Ann. § 62-3-605 or on the appointment of a special administrator (see Question 7: Appointing a Fiduciary in Urgent or Unusual Circumstances), a personal representative in South Carolina is generally not required to file a bond if either:

- All heirs and devisees agree to waive the bond requirement (see Question 20: Waiver of Bond).
- The personal representative is the sole heir or devisee.
- The personal representative is a state agency, bank, or trust company, unless the will expressly requires a bond.

- The personal representative is named in the will, unless the will expressly requires a bond.

(S.C. Code Ann. § 62-3-603(A).)

Despite any waivers of bond, any person with an interest in the estate worth more than \$5,000 or any creditor having a claim in excess of \$5,000, may make a written demand that the personal representative give bond by:

- Filing a Demand for Bond ([Form 342ES](#)) with the probate court.
- Providing written notice to the personal representative.

(S.C. Code Ann. § 62-3-605; see Question 20: Waiver of Bond.)

If bond is required and the will or court's order does not specify the amount, unless stated in the application or petition, the qualifying person must file a statement under oath indicating the person's best estimate of the value of the decedent's personal estate and of the income expected from the personal estate in the following year. The person must execute and file a bond or give other suitable security in an amount not less than that estimate. The court may increase or reduce that bond amount and take certain actions regarding that bond. (S.C. Code Ann. § 62-3-604.)

9. How are the key estate fiduciaries compensated?

Individual Personal Representative

Under South Carolina statute, unless otherwise approved by the court for extraordinary services, a personal representative generally receives as compensation for services:

- Not more than five percent of the appraised value of the probate estate's personal property (with a \$50 minimum):
 - plus, the sales proceeds of the probate estate's real property received on sales directed or authorized by will or court order; and
 - excluding sales to the personal representative as purchaser.
- Not more than five percent of the income earned by the probate estate. This additional commission

is not due if the probate judge determines that a personal representative:

- acted unreasonably in the assigned duties; or
- encountered unreasonable delay.

(S.C. Code Ann. § 62-3-719(a), (b).)

However, these statutory compensation provisions do not apply where either:

- There is a contract that sets the compensation for the personal representative's services, in which case the personal representative is compensated under the contract.
- The will otherwise directs, in which case the personal representative is compensated under the provision in the will.

(S.C. Code Ann. § 62-3-719(c).)

A personal representative also may renounce the right to all or any part of the compensation. A written renunciation of fee may be filed with the court. (S.C. Code Ann. § 62-3-719(d).)

Multiple Fiduciaries

For multiple fiduciaries, the court in its discretion apportions the compensation among the personal representatives. The total compensation for all personal representatives of an estate must not exceed the maximum allowable statutory compensation for an estate with a sole personal representative unless otherwise approved by the court for extraordinary services or otherwise set by contract or will. (S.C. Code Ann. § 62-3-719(c), (e).)

Corporate Personal Representative

Corporate fiduciaries are bound by the same statute regarding fees for personal representatives. Most corporate fiduciaries have published fee schedules and may request written contracts with testators regarding their fees if the fees exceed the statutory amounts, as permitted by statute. It is best practice to have this stated in the will. (S.C. Code Ann. § 62-3-719(c).)

10. What is the level of care that each estate fiduciary owes to the beneficiaries of the estate?

A personal representative in South Carolina is a fiduciary that must observe the statutory standards of care when administering the estate, which is the same standard of care as applicable to trustees. (S.C. Code Ann. §§ 62-3-703(a) and 62-7-804).

A trustee must administer any trusts created under the decedent's will as a prudent person does, by considering the purposes, terms, and other circumstances of the trust. The trustee must exercise reasonable care, skill, and caution under this standard (S.C. Code Ann. § 62-7-804).

Administering the Estate

11. What are the main duties of the estate fiduciary in administering the estate?

In South Carolina, the personal representative's main duties include the duty to collect, settle, and distribute the decedent's estate:

- As quickly and efficiently as possible in the estate's best interest.
- Under the terms of a probated and effective will, if any, and the law.

(S.C. Code Ann. § 62-3-703(a).)

The personal representative must use the representative's authority under statute, the will's terms, and any order in the estate's proceedings for the best interests of the estate's successors (S.C. Code Ann. § 62-3-703(a)).

The personal representative has a duty to timely provide:

- Certain information to heirs and devisees (S.C. Code Ann. § 62-3-705).
- And file an inventory and appraisal with the court and provide it to certain interested persons (S.C. Code Ann. § 62-3-706; see Question 12: Inventory and Appraisal).

Unless otherwise provided in the decedent's will, every personal representative must take possession or control of the decedent's property. However, estate property may be left with or distributed to the person presumptively entitled to it unless or until, in the personal representative's judgment, the personal representative's possession of the

property is necessary for estate administration. The personal representative must pay taxes on and manage, protect, and preserve the estate in the personal representative's possession. The personal representative may maintain an action to recover possession of or determine title to estate property. (S.C. Code Ann. § 62-3-709.)

12. What are the key documents and procedures in your state for ongoing estate administration?

In South Carolina, the personal representative must proceed expeditiously to settle and distribute the estate as follows:

- On opening the probate, the personal representative has a duty to provide information to the heirs and devisees. Within 30 days, the personal representative must give certain information regarding the personal representative's appointment delivered or sent by ordinary mail to each intestate heir (regardless of whether the decedent died intestate) or devisee the address of which is reasonably available. Failure to do so is a breach of the personal representative's duty but does not affect the validity of the personal representative's appointment, powers, or other duties. (S.C. Code Ann. § 62-3-705.)
- To pay any unpaid funeral expenses.
- To gather the decedent's assets and transfer them to the estate's name.
- To publish notice to creditors and properly handle creditors' claims (see Question 14).
- To prepare and file an Inventory and Appraisal with the probate court within 90 days of appointment (see Inventory and Appraisal).
- To manage and preserve the estate assets before distribution.
- To pay estate expenses and taxes, if any.
- On expiration of the creditor claims period, to file:
 - the final accounting;
 - petition for settlement of the estate;
 - proposal for distribution;
 - statutory proofs (for example, certain timely mailings of notices); and
 - proof of publication of notice to creditors.

- For more information on the settlement and closing the estate, see Questions 15 and 16.

Inventory and Appraisal

Within 90 days after the personal representative is appointed, the personal representative, which is not a special administrator or a successor to another representative previously discharged this duty, must prepare an inventory and appraisal of the decedent's probate property. The personal representative must:

- List for each probate asset with reasonable detail and including:
 - the item's fair market value; and
 - the type and amount of any encumbrance that may exist.
- File the original of the inventory and appraisal with the court.
- Mail a copy of the filed inventory and appraisal to interested persons that have filed a demand for notice of that filing.
- Within 90 days of a demand by an interested person:
 - prepare a list of the property owned by the decedent at the decedent's death that is not probate property, as known to the personal representative, which may, at the personal representative's discretion, include the value and nature of the decedent's interest in the property on the decedent's death;
 - mail a copy of the list to each interested person that has requested the list; and
 - file proof of the mailing with the probate court.

(S.C. Code Ann. § 62-3-706.)

If the personal representative becomes aware of any property not included in the original inventory and appraisal or learns that the value or description indicated in the original inventory for any item is false or misleading, the personal representative must both:

- Supplement, amend, or correct the inventory or appraisal to:
 - show the market value as of the decedent's death of any new item;
 - show the revised market value or descriptions of any item;

- indicate the appraisers or other data relied on, if any; and
 - restate the unchanged information from the original inventory and appraisal.
- Furnish copies of the new inventory to:
 - persons that received the original inventory; and
 - interested persons requesting or demanding the new information.

(S.C. Code Ann. § 62-3-708.)

13. What are the due dates for key documents and processes during and after the estate proceeding?

Key probate due dates in South Carolina are as follows:

- The Information to Heirs and Devisees [Form 305ES](#) must be sent out within 30 days of appointment (see Question 6: Those Entitled to Notice of the Appointment).
- The Inventory and Appraisal is due 90 days after appointment (see Deadline for Inventory of Assets).
- On appointment, a personal representative must publish a notice to creditors once a week for three consecutive weeks in a newspaper of general circulation in the county both:
 - announcing the personal representative's appointment; and
 - notifying creditors that they have eight months to present their claims or be forever barred.

(S.C. Code Ann. § 62-3-801(a).)

Though there is no deadline to publish this notice, a publication delay extends the amount of time creditors have to claim against the estate (S.C. Code Ann. § 62-3-803). The probate court typically collects the publication fee when the estate is opened and handles the publication. Creditors must submit their claims within the statutory time frame (see Time Limits for Presentation of Creditor Claims).

- The Final Accounting and Proposal for Distribution ([Form 361ES](#)) is due one year from the decedent's date of death or 90 days from the expiration of the creditor claims period (which period is eight months after publication or one year from the testator's date of death) (S.C. Code

Ann. §§ 62-3-803 and 62-3-1001). For more information on the settlement and closing the estate, see Questions 15 and 16.

The probate court can extend the deadlines for the personal representative on a Motion for Extension of the Personal Representative (S.C. Code Ann. §§ 62-3-704(f) and 62-3-706(C)).

Time Limits for Service of Process

If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner must cause notice of the time and place of the hearing to be given to any interested person or to the interested person's attorney if required, by either:

- Mailing a copy at least 20 days before the hearing generally by certified, registered, or first-class mail.
- Delivering a copy to the person being notified personally at least 20 days before the time set for the hearing.
- If the address or identity of the person is not known and cannot be determined with reasonable effort, by publishing a copy in the manner for the publication of a summons for an absent defendant.

(S.C. Code Ann. § 62-1-401(a).) The court for good cause shown may provide for a different method or time of giving notice for any hearing (S.C. Code Ann. § 62-1-401(b)).

Time Limits for Presentation of Creditor Claims

The time limitations on presentation of creditor's claims are as follows:

- Claims against a decedent's estate which arose before the death of the decedent, unless barred by another statute of limitations or nonclaim statute, generally are barred unless presented within the earlier of:
 - one year after the decedent's death; or
 - the statutory time for creditors that are given actual notice (within one year of the decedent's death or within 60 days from the mailing or other delivery of notice, whichever is earlier) and within the time for all creditors barred by publication (eight months after the date of first publication of the notice).

- All claims against a decedent's estate arising at or after the decedent's death, including South Carolina claims, generally are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

- for a claim based on a contract with the personal representative within eight months after performance by the personal representative is due; or
- for any other claim, within the later of eight months after it arises or one year after the decedent's death.

(S.C. Code Ann. §§ 62-3-801 and 62-3-803; see Question 14.) However, notice to creditors is not required if a personal representative is not appointed to administer the decedent's estate during the one year period after the decedent's death (S.C. Code Ann. § 62-3-801(d)).

Deadline for Inventory of Assets

A personal representative must prepare an inventory and appraisal of the probate property using the statutory forms within 90 days after the personal representative's appointment (S.C. Code Ann. § 62-3-706(A), (B)).

If no interested party in the estate demands an inventory listing non-probate assets, the personal representative uses an Inventory and Appraisal: Probate Property ([Form 350ES SF](#)) listing only probate assets. The personal representative must both:

- File the inventory and appraisal with the court.
- Mail a copy to all interested persons that have filed a demand for notice of filing of the inventory.

(S.C. Code § 62-3-706(A).)

If an interested party in the estate demands that an inventory listing non-probate assets, the personal representative uses an Inventory and Appraisal ([Form 350ES LF](#)). Within 90 days of the demand, the personal representative must:

- Prepare this list.
- Mail a copy to each interested person requesting the list.
- File the proof of mailing with the court.

(S.C. Code Ann. § 62-3-706(B).)

On application of the personal representative, the court may extend the time for filing these documents (S.C. Code Ann. § 62-3-706(C)). On the expiration of all creditor claims period, filing of all tax returns, and completion of all administration, the personal representative must file to close the estate (S.C. Code Ann. 62-3-704(d)).

Federal and State Estate Tax Returns

The personal representative must file the estate's federal estate tax return ([Form 706](#)), if necessary, within nine months after decedent's date of death (26 U.S.C. § 6075(a)). The personal representative may request an automatic six-month extension for filing the return ([Form 4768](#)) if the extension is filed before the return's due date (26 C.F.R. § 20.6081-1(b)).

If an estate has more than one personal representative, the return must be made jointly by all. All personal representatives are responsible for the information contained on the return. However, only one personal representative must sign the estate tax return. (26 C.F.R. § 20.6018-2; see [Instructions for Form 706, Signature and Verification](#)).

The final accounting is not due in the probate court until after the federal estate tax closing letter is received, if a federal estate tax return was filed (S.C. Code Ann. § 62-3-1001(a)). It is best practice to request and obtain a closing letter from the IRS before closing the estate.

South Carolina Estate Tax Return

South Carolina does not currently impose a state estate tax (S.C. Code Ann. § 12-16-510).

Federal Estate Income Tax Return

The due date for any necessary estate income tax return depends on whether the estate is operating on a calendar year or a fiscal year. The return is due by:

- April 15th of the year following the calendar year in which the estate received the income for calendar year estates.
- The 15th day of the fourth month following the close of the tax year for fiscal year estates.

An automatic five and a half-month extension is available. (See [Instructions for IRS Form 1041–Income Tax Return for Estates and Trusts](#).)

South Carolina Estate Income Tax Return

A South Carolina estate income tax return:

- Is required for estates with either a nonresident beneficiary or gross income for the taxable year in excess of \$600 (S.C. Code Ann. § 12-6-4910(5)).
- Must be filed by the estate's fiduciary (S.C. Code Ann. § 12-6-4930).
- Has the same filing deadlines as the federal estate income tax return (S.C. Code Ann. § 12-6-4970(A)).

Considerations for Creditor Claims

14. What is the procedure for notifying and paying creditors of the estate?

Notice to Creditors

On appointment, a personal representative in South Carolina must publish a notice to creditors:

- Once a week for three successive weeks.
- In a newspaper of general circulation in the county.
- Announcing the personal representative's appointment and address.
- Notifying creditors of the estate to present their claims within eight months after the date of the first publication of the notice or be forever barred.

(S.C. Code Ann. § 62-3-801(a).) The probate court typically collects a publication fee when the estate is opened and handles the publication.

A personal representative may also give written notice by mail or other delivery to any creditor, notifying the creditor to timely present the creditor's claim. The personal representative is not liable to any creditor or to any successor of the decedent for giving or failing to give these statutory notices. (S.C. Code Ann. § 62-3-801(b), (c).)

Presentation of Claims

Creditors present their claims as follows:

- Claimants may deliver or mail to the personal representative a timely written statement of the claim. For more information on the time limits for

creditor claims, see Question 13: Time Limits for Presentation of Creditor Claims.

- Claimants must file a Statement of Creditor's Claim (Mandatory) (Form 371ES) with the probate court.

No creditor's claim can be filed against a decedent's estate before the appointment of a personal representative. A creditor may seek appointment as personal representative if:

- 45 days passed since the decedent's death.
- No other person with greater statutory priority sought appointment.
- The creditor attaches a written statement of the claim to the application or petition for appointment.

(S.C. Code Ann. §§ 62-3-203(a)(6) and 62-3-804(1)(b); see Question 14: Appointing a Fiduciary Where Decedent Died Without a Will.)

Allowing or Rejecting the Claim

The personal representative must allow or reject the claim using a Notice of Allowance/Disallowance of Claim (Form 372ES) within the later of:

- 60 days of the date the claim is presented.
- 14 months after the decedent's death.

(S.C. Code Ann. § 62-3-806(a).) The court may reasonably extend the time this time for filing the notice of allowance or disallowance of a properly filed claim (S.C. Code Ann. § 62-3-806(a)).

The personal representative may commence a proceeding, on the filing of a summons and petition (and proper service of notice) to obtain the court's approval of an allowance, in whole or part, of any unbarred claim properly and timely presented (S.C. Code Ann. § 62-3-806(b)). A personal representative generally commences this proceeding if, for example, there may be disputes between the claimant and interested person as to the claim's amount or validity.

Any disallowance (rejection) of a claim, including a partial disallowance, must include notice that the claim is barred unless the claimant starts a proceeding within 30 days of the mailing or other service of disallowance. This rejection must be both:

- Served on the claimant.
- Filed with the probate court along with a copy of the notice to the claimant.

(S.C. Code Ann. § 62-3-806(a).)

The claimant starts this proceeding by timely filing a summons and Petition for Allowance of Creditor Claim (Form 373ES) in any court with jurisdiction over the personal representative and serving the summons and petition on the personal representative. No creditor generally can start a claim payment proceeding more than 30 days after the personal representative mailed a notice of disallowance of any part of the claim. However, if a claim is not presently due or is contingent or unliquidated, the personal representative may consent to or the court may for good cause extend the 30-day period in which the claimant can file a proceeding. However, in no event can the extension run beyond the applicable statute of limitations. (S.C. Code Ann. §§ 62-3-804(5) and 62-3-806; see Question 4: Statutes of Limitation.)

Payment of Claims

If assets of an estate are insufficient to pay all the claims in full, the personal representative makes payment in following order (unless the will provides otherwise):

- Costs and expenses of administration, including attorney's fees and funeral expenses.
- Debts and taxes with preference under federal law.
- Reasonable and necessary medical expenses, hospital expenses, and personal care expenses of the last illness of the decedent, including compensation of persons attending the decedent before death.
- Debts and taxes with preference under South Carolina law, in the order of their priority, including medical assistance paid under Title XIX State Plan for Medical Assistance as provided under S.C. Code Ann. § 43-7-460.
- All other claims.

(S.C. Code Ann. § 62-3-805.)

The personal representative must pay the allowed claims:

- Before the closing of the estate and no later than 14 months after the decedent's death.
- In the prescribed order of priority, after making provision for:
 - the homestead;
 - exempt property under S.C. Code Ann. § 62-2-401;
 - claims already presented which were not allowed or the disallowance of which is the subject of a

legal proceeding or for which the time to file this proceeding has not expired; and

- unbarred claims that may yet be presented, including costs and expenses of administration.

(S.C. Code Ann. § 62-3-807(a); see [State Q&A, Wills: South Carolina: Question 8.](#))

On the expiration of the time for presentation of claims, any claimant may file a petition for an order directing the personal representative to pay allowed claims to the extent estate assets are available for payment without impairing the ability of the personal representative to fulfill the other obligations of the estate (S.C. Code Ann. § 62-3-807(b); see Question 13: Time Limits for Presentation of Creditor Claims).

The personal representative may pay any just and unbarred claim at any time, with or without formal presentation. However, the personal representative is personally liable to any other claimant, with an allowed claim, injured by this payment if the personal representative made payment either:

- Before the expiration of the presentation of claim time limit and the personal representative did not require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants.
- Due to the personal representative's negligence or willful fault, depriving the injured claimant of that claimant's priority.

(S.C. Code Ann. § 62-3-807(c); see Question 13: Time Limits for Presentation of Creditor Claims.)

Closing the Estate

15. What is the process for concluding (or closing) the estate?

South Carolina statute sets the required filings with the court on the estate's closing process, which are generally the same whether it is a formal proceeding or informal proceeding, which include:

- A final Accounting ([Form 361ES](#)), unless waived by a Waiver of Statutory Filing Requirements ([Form 364ES](#)).
- A Proposal for Distribution ([Form 410ES](#)) of assets, unless waived by a Waiver for Notice in an Estate ([Form 364ES](#)).

- An Application for Settlement ([Form 412ES](#)) of the estate to consider the final accounting or approve an accounting and distribution and adjudicate the final settlement and distribution of the estate.
- Proof that a Notice of the Right to Demand Hearing ([Form 416ES](#)) and that copies of the final Accounting, Proposal for Distribution, and Application for Settlement were sent to all interested persons, including all creditors or other claimants of which the personal representative is aware the claims of which are neither paid nor barred, unless the notice is waived ([Receipt and Release with Waiver, Form 403ES](#)).

(S.C. Code Ann. § 62-3-1001(a).)

The court may enter an order closing the probate:

- After 30 days from when the personal representative files proof that the Notice of Right to Demand Hearing was sent to persons entitled to notice.
- At any time after the Application for Settlement is filed, if the notice of right to demand a hearing was waived.

(S.C. Code Ann. § 62-3-1001(c), (e).)

The personal representative must file these closing documents within the later of:

- The expiration of the applicable time limitation for any creditor to commence a proceeding contesting a disallowance of a claim.
- The time when all legal proceedings commenced for allowance of a claim have ended under statute.
- If a state or federal estate tax return was filed, within 90 days after the receipt of a state or federal estate tax closing letter.

(S.C. Code Ann. § 62-3-1001(a); see Question 14: Allowing or Rejecting the Claim.)

In certain limited circumstances, a personal representative can summarily close the estate (see Question 19: Summary Administration).

16. Please describe if there is any special action needed to discharge the estate fiduciary from continuing liability for actions taken on behalf of the estate.

In South Carolina, the court may enter an order discharging the person representative from further claim by any interested person:

- After 30 days from when the personal representative files proof that a notice of right to demand hearing and that copies of the Final Accounting, the Proposal for Distribution, and the Application for Settlement of the Estate were sent to all interested persons including all creditors or other claimants of which the personal representative is aware the claims of which are neither paid nor barred, unless the Notice of Right to Demand Hearing ([Form 416ES](#)) is waived ([Form 403ES](#)).
- At any time after the settlement application is filed, if notice of right to demand hearing was waived.

(S.C. Code Ann. § 62-3-1001(a), (c).) However, if an interested person files a written demand for hearing within 30 days from when the personal representative files proof of sending a notice of right to demand hearing to all persons entitled to it, the court may enter its order discharging the personal representative only after statutory notice and a hearing (S.C. Code Ann. § 62-3-1001(c)).

A personal representative cannot be surcharged for acts of administration or distribution if the personal representative's conduct was authorized (S.C. Code Ann. § 62-3-703(b)).

Expense and Timeline

17. What are the expected costs for a typical estate proceeding?

In South Carolina, the primary costs of an estate proceeding are:

- The costs associated with opening the estate in the appropriate court, including:
 - the filing fee; and
 - any fees associated with locating and serving interested parties.
- Personal representative fees (see Question 9).
- Attorneys' fees (generally, on an hourly basis as South Carolina does not provide for statutory fees in this circumstance).
- Accountant fees.

The expected costs of an estate proceeding vary greatly depending on factors, for example:

- The size of the state, which determines:
 - the court's filing fee, which may vary county to county and may be based on the estate's value (counsel should check with the probate court's webpage in the county of filing);
 - the cost of publishing notice;
 - the probate fees based on the value reported on the inventory of one-fourth of one percent for property more than \$600,000. It is best to contact each county for their fee schedules;
 - fees for any required appraisals or valuations; and
 - fees for the accounting.
- The nature and complexity of the estate assets.
- The ease of locating the decedent's heirs.
- How many heirs require service of process.
- Whether a bond is required (see Question 8).
- Whether there are any challenges to the estate. If the personal representative defends or prosecutes any proceeding in good faith, whether successful or not, the personal representative is entitled to receive from the estate the personal representative's necessary expenses and disbursements including reasonably attorneys' fees incurred (S.C. Code Ann. § 62-3-720).
- How involved the personal representative's attorney needs to be in the estate matters.

18. How long does the typical estate proceeding take?

An estate is typically open in South Carolina for at least a year. The timeline for opening and closing an estate varies depending on factors including:

- The nature and complexity of the estate assets.
- The ease of locating the decedent's heirs.
- Whether there are any challenges to the estate.
- The volume of work the court has when the will is offered for probate.

For information on the statute of limitations for estate proceedings, see Question 4: Statutes of Limitation.

Miscellaneous Estate Proceedings and Processes

19. Please list and describe any simplified or special proceedings or non-court processes for transferring a decedent's assets at death that are available in your state.

In South Carolina, there are several expedited proceedings and non-court processes for transferring a decedent's assets at death:

Affidavit of Collection of Personal Property

A person who is a successor to the decedent as to the decedent's personal property (or a person on the successor's behalf) may use an affidavit procedure to collect the decedent's personal property if:

- The total value of the decedent's entire probate estate after subtracting the value of liens and encumbrances is not more than \$25,000.
- At least 30 days passed since the decedent's death.
- There are no pending applications or petitions for probate.

(S.C. Code Ann. § 62-3-1201(a).)

If these requirements are met, the successor or a person on the successor's behalf can file an Affidavit of Collection of Personal Property ([Form 420ES](#)) containing the information required by statute with the probate court (S.C. Code Ann. § 62-3-1201). The Affidavit applies only to the personal property listed on the Affidavit. If the decedent died with a will, [Form 300ES](#) is also required when using this affidavit procedure to probate the will and establish the estate's beneficiaries under S.C. Code Ann. § 62-3-102.

The person delivering the personal property to the successor under the affidavit is discharged and released to the same extent as if that person dealt with decedent's personal representative. The person is not required to inquire into the truth of any statement in the affidavit. Any successor to whom payment is made is accountable to any personal representative of the estate or to any other person with a superior right to the property (S.C. Code Ann. § 62-3-1202.)

This procedure is often used for collecting small bank accounts, utility refunds due to the decedent, and negotiating small checks. This procedure does not require the appointment of a personal representative and can be useful for small probate estates with no real property.

Summary Administration

The personal representative can immediately distribute the assets to those entitled to them and file a Verified Statement to Close the Estate ([Form 421ES](#)) if either:

- It appears from the inventory and appraisal that the total value of the decedent's entire probate estate after subtracting the value of liens and encumbrances is not more than \$25,000 and the personal representative published notice to creditors (without additional notice to creditors).
- After appointment, it appears the personal representatives are the sole heirs or devisees of the estate and the personal representative published notice to creditors (without additional notice to creditors).

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

In these cases, the distributee of the assets is responsible for paying any valid creditor claims.

Unless prohibited by court order (and not for estates administered under Part 5), after filing an inventory and paying court fees due, the personal representative may close the estate under these summary administration procedures by filing, after distribution of the estate, a verified statement containing the information required by statute (S.C. Code Ann. § 62-3-1204(a)). If there are no unresolved claims, actions, or proceedings involving the personal representative pending one year after the decedent's death, the appointment of the personal representative terminates (S.C. Code Ann. § 62-3-1204(b)).

Administration Under Part 5

Administration Under Part 5 is a single *in rem* proceeding to secure complete administration and settlement of a decedent's estate under the court's continuing authority (that is, when a representative wants to ensure every step of administration has notice and a hearing) (S.C. Code Ann. §§ 62-3-501 to 62-3-505, 62-3-501, cmts.). It is rarely used to administer a South Carolina estate.

Ancillary Probate or Administration

Ancillary probate or administration are the court proceedings necessary to distribute a nonresident decedent's South Carolina probate estate. The ancillary probate process in South Carolina varies depending on the circumstances.

Sixty days after a nonresident decedent's death, a domiciliary foreign personal representative can use an expedited procedure to collect South Carolina:

- Personal property.
- Instruments evidencing a debt, obligation, stock, or cause of action belonging to the decedent's estate.

(S.C. Code Ann. § 62-4-201.) The domiciliary foreign personal representative must present proof of the representative's appointment and an affidavit stating:

- The date of the nonresident decedent's death.
- That no local administration, or application or petition, is pending in South Carolina.
- That the domiciliary foreign personal representative is entitled to payment or delivery.

(S.C. Code Ann. § 62-4-201.) Payment or delivery of this personal property to the domiciliary foreign personal representative if a South Carolina creditor of the nonresident decedent gave written notice to the debtor or custodian of the property that the property should not be delivered to the representative (S.C. Code Ann. § 62-4-203).

A domiciliary foreign personal representative may also transfer a nonresident decedent's South Carolina real property using an expedited procedure. If there is no open or pending South Carolina estate administration, the domiciliary foreign personal representative may transfer probate real property to the heirs in an intestate estate or the beneficiaries in a testate estate after filing both:

- Exemplified copies of the out-of-state probate proceedings with the probate court.
- A deed of distribution for the real property at the local Register of Deeds Office and Probate Court.

In this case, a full probate administration of the South Carolina estate is not required and the court does not need to appoint a personal representative. (S.C. Code Ann. §§ 62-3-301(a)(7), 62-4-204, and 62-4-205.)

Otherwise, the South Carolina statutes applying to the administration of South Carolina estates apply

to administer the South Carolina property of a nonresident decedent (S.C. Code Ann. § 62-4-207).

For more information on ancillary administration in South Carolina, see [Practice Note, Ancillary Probate in South Carolina](#).

Non-Probate Transfers at Death

A testator can use non-probate means for transferring property at death without a probate, for example, by holding property in:

- Joint tenancy with a survivorship right.
- A living trust.
- A life insurance policy.
- A retirement account.
- A multiple party financial account with a transfer on death designation.

South Carolina currently does not recognize transfer on death deeds for real property.

Waiver of Probate Requirements and Formal Probate

20. What types of estate proceedings or probate requirements can be waived by will in your state? Specifically, please discuss:

- Whether any particular language is required to accomplish a waiver and if so, please include the language.
- Whether it is common to waive these estate proceedings or probate requirements.

Waiver of Bond

In South Carolina, a testator can waive bond in the testator's will if both:

- The testator names a personal representative in the will.
- The will does not expressly require bond.

(S.C. Code Ann. § 62-3-603(A)(4).) It is common practice in South Carolina for wills to waive bond.

Where a bond is required of the personal representative or administrator of an estate by law or will, the bond

requirement may be waived in certain circumstances. Unless an interested person having an interest in the estate in excess of \$5,000 demands a bond or a special administrator is appointed, a bond may be waived if both:

- The personal representative or administrator, by affidavit when of applying for appointment:
 - certifies to the court that the gross value of the estate is to be less than \$20,000;
 - certifies to the court that the assets of the probate estate are sufficient to pay all claims against the estate; and
 - agrees to be personally liable to any beneficiary or other person having an interest in the estate for any negligence or intentional misconduct in the performance of the personal representative's duties as personal representative or administrator.
- All known beneficiaries and other persons having an interest in the estate (not including creditors) execute a written statement on a court form ([Form 344ES](#)) that they agree to the bond being waived. This form must be filed with the court simultaneously with the required affidavit. A creditor is not considered a person having an interest in the estate.

(S.C. Code Ann. § 62-3-603(B); see Question 8.)

Estate Proceedings

In addition to waiving bond, a South Carolina a testator can, in the testator's will:

- Direct that the personal representative is not entitled to receive compensation for serving as personal representative (S.C. Code Ann. § 62-3-719(c)). If language to this effect is not included, the personal representative is entitled to statutory commissions or, if the will or an outside contract provides for compensation, compensation as specified in at will or contract (see Question 9). It is not common for a will to provide the personal

representative receives no compensation as it is a disincentive for personal representatives to serve. A personal representative may also renounce the representative's right to all or part of any compensation (S.C. Code Ann. § 62-3-719(d)).

- Grant the personal representative the authority to sell real property, or any tangible or intangible personal property (other than regularly traded securities or certain property with readily ascertainable market values) with an aggregate value of \$10,000 or more, without probate court approval. Testators should generally include this authority their wills. If a testator does not expressly grant the personal representative this authority in the will, the personal representative must seek court approval before selling any estate real property (S.C. Code Ann. § 62-3-711(b)). The following is sample language for granting this authority:

"By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to personal representatives or trustees generally, my Personal Representative is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions in cash or in kind or partly in each without regard to the income tax basis of such asset and in general, to exercise all of the powers in the management of my Estate which any individual could exercise in the management of similar property owned in its own right, upon such terms and conditions as to my Personal Representative may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order."

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