

Small Estates
In the Wake of the Last Session of the Legislature

Presented to the Clerk's Conference

September 2023

1. History:

The Small Estate Affidavit has been eliminated and replaced with a more formal process which requires a Petition, as well as an Order that directs the Court Clerk to issue **Limited** Letters.

2. Road Map Going Forward:

- a. A Petition cannot be filed until after the expiration of (45) days from the date of the decedent's death. Upon good cause shown, the Court may waive the (45) day requirement.
- b. There is "no real property" at issue in a small estate under either the former statute or the new statute. Now instead of an Affidavit, **Limited** Letters are issued (whether or not there is a Will.) Nothing in the statute gives any authority to the Personal Representative to handle any real estate matters of the decedent.
- c. "Property" means only personal property, or any interest in personal property, owned by the decedent on the date of death that would be subject to probate, other than personal property held as tenants by the entirety or jointly with right of survivorship, or personal property payable to a beneficiary other than the decedent's estate.
- d. **Limited letters** are RESTRICTED to authorize action regarding ONLY the property itemized and identified in the Petition, which Petition and list must be attached to and made a part of the **Limited** Letters. If the Petition (with list) is not attached to the Limited Letters, they are not valid.

- e. Bond is required, with exceptions as noted below.
- f. No Notice to Creditors must be published and creditors cannot file claims in the small estate.

3. To make application for Limited Letters:

Whenever a decedent leaves a small estate, it may be administered in the following manner:

- a. Limited Letters of Administration of a small estate (No Will):
 - 1. Petition can be filed after the expiration of forty-five (45) days from the date of the decedent's death.
 - 2. Petitioner must file a copy of the decedent's death certificate.
 - 3. Petition can be filed by one (1) or more of the decedent's competent adult heirs (the non-felon language needs to be included in the Petition)
- b. Limited Letters Testamentary of a small estate:

If there is a Will and distribution of the small estate pursuant to the decedent's Will is different than distribution by intestate distribution, **and it is desired that the small estate be distributed according to the decedent's Will**, the person named as the Personal Representative in the decedent's Will shall **either**:

- 1. File a Petition for the probate of the decedent's Will as a muniment of title to the property of the decedent pursuant to TCA §32-2-111 and for the issuance of Limited Letters testamentary of a small estate; **or**
- 2. File the original Will together with affidavits of the attesting witnesses or the affidavits of the two (2) disinterested persons attesting to the decedent's handwriting, if the decedent's Will is holographic, with the clerk who shall record the Will and affidavits. The recording of the decedent's Will and accompanying affidavits is

deemed sufficient to probate the decedent's Will for the purposes of this chapter.

NOTE: When the Clerk & Master records the Will in the Will Book, it should be accompanied with a note that it is in a Limited Letters Small Estate.

c. Requirements for both Limited Letters of Administration or Limited Letters Testamentary

1. FILE a sworn Petition containing the information set forth in §30-1-117(a)(1)-(10) and an accompanying Order authorizing the Clerk & Master to issue the Limited Letters.
2. The Petition **must include** an itemized list of the property of the decedent to which the Limited Letters are to apply, the value of each item of property, the identity of each creditor of the decedent, and the amount owing to each identified creditor.
3. The Petition and list of property must be attached to the Limited Letters in order to be valid Limited Letters.
4. **Bond:**
 - A. Bond must be posted, regardless of the language in the Will;
 - B. Bond shall be payable to the clerk of the court for the benefit of those entitled with a corporate surety and
 - C. the amount of the bond must be equal to the value of the decedent's property to be administered under this chapter.

EXCEPT: Bond is **not** required if:

- A. The Petitioner or Petitioners are the sole heirs of the intestate decedent;
- B. The Petitioner or Petitioners are the sole beneficiaries of the testate decedent; **or**

C. All the adult heirs and beneficiaries consent in writing.

5. The statute contains a form for the Limited Letters in TCA §30-4-103 (9).
6. The Personal Representative must furnish each person indebted to the decedent's estate, having possession of any property belonging to the estate, or acting as registrar or transfer agent of any shares of stocks, bonds, notes, or other evidence of ownership, indebtedness, or right belonging to the decedent's estate a copy of the Limited Letters.
7. Personal Representative and any person to whom payment, transfer, or delivery, of property is liable for (1) year from the date of transfer to the extent of the value of property being transferred or delivered.
8. Liability to TennCare: If the Personal Representative makes any distribution prior to making payment of expenses owed to TennCare under §71-5-116, then both the Personal Representative and the person to whom payment, transfer, or delivery is made shall be liable and remain liable to TennCare to the extent of the value of the property received.
9. The Limited Letters remain open and active until the first anniversary of the issuance of the Limited Letters. At that time the Personal Representative and the surety (if any) will automatically be discharged from liability by the Court.

4. Conversion to a Full Probate:

If, during the administration of the small estate pursuant to the Limited Letters, additional assets are found that exceed the statutory small estate limitation, then the Court may allow the small estate administration to be

converted into full probate or estate administration by application of a verified Petition to the Court pursuant to TCA §30-1-117 by the Personal Representative of the small estate or a creditor of the decedent.

TCA § 30-4-101 et seq., effective April 28, 2023.

TCA §30-4-101

This chapter is known and may be cited as "The Small Estate Probate Act."

TCA §30-4-102

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Court" means the court then exercising probate jurisdiction in the county in which the decedent had legal residence on the date of death;
- (2) "Decedent" means a person who is deceased;
- (3) "Limited letters" means the limited letters of administration of a small estate and limited letters testamentary of a small estate, as appropriate;
- (4) "Limited letters of administration of a small estate" means limited letters of administration for the decedent's property that restrict the person to whom the limited letters of administration are issued to the property itemized and identified in the petition for the limited letters, which must be attached to and made a part of the limited letters;
- (5) "Limited letters testamentary of a small estate" means limited letters testamentary for the decedent's property that restrict the person to whom the limited letters testamentary are issued to the property itemized and identified in the petition for the limited letters which must be attached to and made a part of the limited letters;
- (6) "Person" means an individual, partnership, firm, business trust, corporation, or other legal entity, and includes both the singular and plural, and the masculine and feminine, as appropriate;
- (7) "Personal representative" means the person to whom limited letters of administration of a small estate or limited letters testamentary of a small estate are issued;

(8) "Property" means only personal property, or any interest in personal property, owned by the decedent on the date of death that would be subject to probate, other than personal property held as tenants by the entirety or jointly with right of survivorship, or personal property payable to a beneficiary other than the decedent's estate; and

(9) "Small estate" means the probate estate of a decedent in which the value of the probate property does not exceed fifty thousand dollars (\$50,000).

TCA §30-4-103

Whenever a decedent leaves a small estate, it may be administered in the following manner:

(1) After the expiration of forty-five (45) days from the date of the decedent's death, as evidenced by a copy of the decedent's death certificate, provided that no petition for the appointment of a personal representative of the decedent's estate has been filed in that period of time for the decedent's estate, either:

(A) One (1) or more of the decedent's competent adult heirs shall file a petition for the issuance of limited letters of administration of a small estate; or

(B) If the decedent died testate and it is determined that distribution of the small estate pursuant to the decedent's will is different than distribution by intestate distribution, and it is desired that the small estate be distributed according to the decedent's will, the person named as the personal representative in the decedent's will shall either:

(i) File a petition for the probate of the decedent's will as a muniment of title to the property of the decedent pursuant to § 32-2-111 and for the issuance of limited letters testamentary of a small estate; or

(ii) File the original of the decedent's will together with affidavits of the attesting witnesses or the affidavits of the two (2) disinterested persons attesting to the decedent's handwriting, if the decedent's will is holographic, with the clerk who shall record the will and affidavits. The recording of the decedent's will and accompanying affidavits is deemed sufficient to probate the decedent's will for the purposes of this chapter;

(2) To apply for limited letters of administration of a small estate or for limited letters testamentary of a small estate, the person seeking the limited letters shall file a sworn petition with the court containing the information set forth in § 30-1-117(a)(1)-(10). The petition must include an itemized list of the property of the decedent to which the limited letters are to apply, the value of each item of property, the identity of each creditor of the decedent, and the amount owing to each identified creditor;

(3) Regardless of the language of the decedent's will waiving bond, the petitioner for the limited letters shall make the bond payable to the clerk of the court for the benefit of those entitled with a corporate surety. The amount of the bond must be equal to the value of the decedent's property to be administered under this chapter. However, bond is not required of the petitioner if:

(A) The petitioner or petitioners are the sole heirs of the intestate decedent;

(B) The petitioner or petitioners are the sole beneficiaries of the testate decedent; or

(C) (C) All the adult heirs and beneficiaries consent in writing;

(4) The clerk shall charge and receive such fees for processing a petition for the issuance of limited letters of administration of a small estate or limited letters testamentary of a small estate as provided in § 8-21-401;

(5) Upon posting the required bond, unless waived as set forth in subdivision (3), the clerk shall issue limited letters of administration of a small estate or limited letters testamentary of a small estate, as appropriate, on the form in subdivision (9);

(6) A notice to creditors must not be published, and a creditor is not permitted to file a claim in a small estate probate;

(7) The personal representative and the surety on the personal representative's bond may be discharged from liability under the bond as follows:

(A) The court may enter an order discharging the personal representative and the surety on the personal representative's bond after the personal representative files, for a decedent dying before January 1, 2016, either the tax receipt issued pursuant to § 67-8-420, or the certificate or assessment issued pursuant to § 67-8-409(f); or

(B) The personal representative and the surety on the personal representative's bond may wait until the first anniversary of the issuance of the limited letters when the court shall automatically discharge them from liability. The limited letters must remain open and active until the first anniversary of the issuance of the limited letters;

(8) Upon good cause shown, the court may waive the requirement to wait forty-five (45) days before filing a petition for limited letters; and

(9) The form for issuance of limited letters of administration of a small estate or limited letters testamentary of a small estate must be as follows:

Limited Letters of Administration/Limited Letters Testamentary of a Small Estate
Pursuant to T.C.A. § 30-4-101, et seq.

In the Matter of the Estate of:-----

Whereas, it appearing that the above-named deceased person left property and debts subject to administration pursuant to the above-referenced statutory provisions, and _____ is hereby authorized to serve in the limited role of Personal Representative.

As such, Limited Letters of Administration/Letters Testamentary of a Small Estate are hereby issued to the above-named individual being now therefore empowered to collect and preserve all assets of the estate, remove any personal property from a property leased by the decedent, and cancel any insurance policies no longer applicable due to decedent's death. Said assets are limited to those itemized in the Petition, a copy of which is attached hereto. The total value of decedent's property shall not exceed \$50,000.00.

There is no real property at issue in this matter, and this limited letter in no way gives any authority to the personal representative to handle any real estate matters of the decedent.

In witness whereof, I have issued these Limited Letters of Administration/Limited Letters Testamentary.

Date: ___ Clerk: _____

I swear that all statements in the Small Estate documents I have executed and provided are true and accurate. I do solemnly swear or affirm that I will faithfully and honestly discharge the duties imposed upon me and as required by law.

Date: ___ Personal Representative: _____

I, as Clerk, certify that these Letters are in full force and effect as of this date of issuance.

Date: ___ Clerk: _____

TCA §30-4-104

(a) Each person indebted to the decedent's estate, having possession of any property belonging to the estate, or acting as registrar or transfer agent of any shares of stocks, bonds, notes, or other evidence of ownership, indebtedness, or right belonging to the decedent's estate must be furnished with a copy of the limited letters of administration of a small estate or limited letters testamentary of a small estate by the personal representative, duly certified by the clerk of the court. Upon receipt of a copy of the limited letters of administration of a small estate or limited letters testamentary of a small estate and demand by the personal representative, each person furnished a copy of the limited letters under this subsection (a) shall pay, transfer, and deliver to the personal representative:

- (1) All indebtedness owing by the recipient; and
- (2) Other property in possession of, or subject to, registration or transfer by the recipient.

(b) A person making payment, transfer, or delivery of property belonging to a decedent's estate to the personal representative pursuant to this chapter is released and discharged from all further liability to the estate and its creditors to the same extent as if the payment, transfer, or delivery were made to the duly appointed, qualified, and acting personal representative of the decedent. The person making the payment, transfer, or delivery shall not be required to see to its application.

(c) The decedent's property must be distributed either to the decedent's heirs as provided by law or, if there is a will, in accordance with the terms of the decedent's will admitted to probate as a muniment of title or filed with the clerk as provided in § 30-4-103(1)(B)(ii). The person to whom payment, transfer, or delivery of any property of the decedent is made by the personal representative shall be liable and remain liable up to one (1) year from the date of payment, transfer, or delivery, to the extent of the value of the property received, to unpaid creditors of the decedent, to anyone who had a prior right to the decedent's property, or to any personal representative of the decedent thereafter appointed. If distribution is made prior to payment of all medical assistance owed to TennCare under § 71-5-116, then both the personal representative and the person to whom payment, transfer, or delivery is made by the personal representative shall be liable to TennCare and remain liable, to the extent of the value of the property received.

(d) If a person having possession of any of the decedent's property, upon receipt of a copy of the limited letters issued by the clerk, refuses to pay, transfer, or deliver the property to, or at the direction of, the personal representative, then:

- (1) The property may be recovered; or
- (2) (A) Transfer and delivery of the property may be compelled in an action brought in a court of competent jurisdiction for that purpose upon proof of the facts required to be stated in the petition; and
(B) Costs of the proceeding must be adjudged against the person wrongfully refusing to pay, transfer, or deliver the property.

(e) If, during the administration of the small estate pursuant to the limited letters, the personal representative or a creditor of the decedent discovers additional assets that exceed the statutory small estate limitation, then the court may allow the small estate administration to be converted into probate administration by application of a verified petition to the court pursuant to § 30-1-117 by the personal representative of the small estate or a creditor of the decedent. The personal representative of the small estate, if the property of the decedent has not been paid, transferred, or delivered, or the person or persons to whom the property of the decedent has been paid, transferred, or delivered, is liable for the assets that have been paid, transferred, or delivered prior to the conversion.

This new statute is being handled differently in different locales across the state. There is presently a group working on forms in an effort to be able to consistently and uniformly streamline the small estate process without having clerks giving legal advice.