

WHAT IS A SMALL ESTATE

Tenn. Code Ann. § 30-4-102(9)

- A "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).
- The Small Estate statute does not cover real property! This statute only gives the
 Personal Representative authority to take receipt of and distribute personal property that
 is specifically listed in the Petition.

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WHAT IS "PROPERTY" UNDER THE STATUTE

- "Property" means only personal property (not real property), or any interest in personal
 property, owned by the decedent on the date of death that would be subject to probate."
 <u>Tenn. Code Ann. § 30-4-102(8).</u>
- 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 <u>does not</u>
 come under the control of the Personal Representative.

Tenn. Code Ann. § 30-4-102(4-5)

- "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.
- "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 most be attached to and made a part of the limited letters.

WHEN MAY A SMALL ESTATE BE ADMINISTERED?

- 45 days <u>subsequent</u> to the decedent's death. The 45-day waiting period may be waived for "good cause shown." <u>Tenn. Code Ann. § 30-4-103(8).</u>
- The date of death must be verified by the decedent's death certificate.
- And then, only if there has been "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."
- Tenn. Code Ann. § 30-4-103(1).

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WHO MAY PETITION THE COURT

- Must be "One (1) or more of the decedent's competent adult heirs." <u>Tenn. Code Ann. 8</u> 30-4-103(1)(A).
- An heir is defined in <u>Tenn. Code Ann. 9.31-1-101</u> as follows: "Heirs" means those
 persons, including the surviving spouse, who are entitled under the statutes of intestate
 succession to the property of a decedent."
- The Personal Representative named in the decedent's Will. <u>Tenn. Code Ann. § 30-4-103(1)(A).</u>
- Note: Unlike a traditional probate, creditors are not able to file a petition or a claim under the Small Estate Probate Act.

PETITION CONTENTS FOR LIMITED LETTERS OF ADMINISTRATION

- The "sworn petition with the court containing the information set forth in \$ 30.1:

 117(a)(1)-(10). (There is actually 11 items to be considered in Tenn. Code Ann. \$ 30-1:

 117(a) (see next slide)
- 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.

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IS A BOND REQUIRED

Tenn. Code Ann. § 30-4-103(3)(A-C)

- 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.
- Bond may be waived if:
- The petitioner or petitioners are the sole heirs of the intestate decedent.
- The petitioner or petitioners are the sole beneficiaries of the testate decedent; or
- All the adult heirs and beneficiaries' consent in writing.

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- 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
 lanuary 1, 2016, either the tax receipt issued pursuant to § 67-8-420, or the certificate or
 assessment issued pursuant to § 67-8-409(f). Term: Code Ann. § 50-4-105(7)(A).
- OR
- The personal representative and the surety on the personal representatives bond may wait until the
 first anniversary of the issuance of the limited fetters when the court <u>shall automatically discharge</u>
 them from liability. Tenn. Code Ann. § 30-4-103(7)(B).

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NOTICE TO CREDITORS

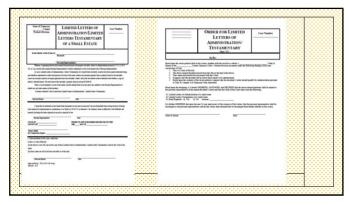
 "A notice to creditors must not be published, and a creditor is not permitted to file a claim in a small estate probate." <u>Tenn. Code Ann. § 30-4-103(6).</u>

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Muniment of Title to Real or Personal Property Tenn. Code Ann. § 30-4-103(1)(B)(i)

 The Small Estate Probate Act allows the Personal Representative to file a Petition to Muniment Title to real or personal property pursuant to Tenn. Code Ann. § 32-2-111.

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Be careful of the wording in this part of the statute! • 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 by this ributed according to the decedent's will, the person named as the personal representative in the decedent's will shall either. • (I) Fide a petition for the probate of the decedent's will as a muniment of title to the property of the decedent is will and for the issuance of finited letters testamentary of a small estate; or • (I) Fide to 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 elerk 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.

DESTRUCTION OR CONCEALMENT OF A WILL IS A FELONY

- Any person who destroys, or conceals the last will and testament of a testator, or any codicil thereto, with intent to prevent the probate thereof or defraud any devisee or legates, commits a Class E felony. <u>Tenn. Code Ann. § 39:14-131.</u>
- The custodian of the will cannot remain passive. Either lite one named as the executor or myone else lawing it in possession or knowing where it is may be summoned to appear before the probate court and required to surrender it or give testimony in regard to its existence or place of deposit. If the person summoned refuses to produce the will if in the possession, or, if sharing tad the will make passession, excluses to inform the court where it is, or rotises to testify, obedience may be compelled by attachment and panishment for contempt, by virtue of the inherent power which the probate court possesses to enforce such orders as may be accessing to give effect to its jurisdiction."

 1 Princhard on the Law of Wills and Admin of Estates § 331 (2024).