

RULE 4:80. Application To Surrogate's Court For Probate Or Administration

4:80-1. Application

(a) **Contents.** Unless a complaint for probate is filed with the Superior Court pursuant to R. 4:83, an application for the probate of a will, for letters testamentary, letters of administration, letters of administration of non-resident estates in which administration has not been sought in the decedent's state of residence, letters of administration with the will annexed, letters of administration ad prosequendum, letters of substitutionary administration and letters of substitutionary administration with the will annexed shall be filed with the Surrogate's Court, stating: (1) the applicant's residence; (2) the name and date of death of the decedent, his or her domicile at date of death and date of the last will, if any, of decedent; (3) the names and addresses of the spouse, heirs, next of kin and other persons, if any, entitled to letters, and their relationships to decedent, and, to the best of the applicant's knowledge and belief, identifying any of them whose names or addresses are unknown and stating further that there are no other heirs and next of kin; (4) the ages of any minor heirs or minor next of kin; and in an application for probate of a will, whether the testator had issue living when the will was made, and whether he or she left any child born or adopted thereafter or any issue of such after-born or adopted child, and the names of after-born or adopted children since the date of the will, or their issue, if any. The applicant shall verify under oath that the statements are true to the best of the applicant's knowledge and belief.

(b) **Certificates, Affidavits Accompanying the Application.** Except in an application for substitutionary letters, the application shall be accompanied by a certificate of death or other competent proof thereof, unless for good cause dispensed with; and in all applications where a bond is required of the person applying for letters, the application shall be accompanied by an affidavit of the value of the personal estate.

(c) **Filing.** The application for the probate of a will or for letters of administration shall be filed with the Surrogate's Court of the county in which the decedent was domiciled at death, or if at that time the decedent was not domiciled in this State, then with the Surrogate's Court of any county in which the decedent left any property or into which any property belonging to the decedent's estate may have come.

(d) **Recording.** The application shall be recorded by the Surrogate's Court.

(e) **Voluntary Discharge.** A personal representative for an estate who is unwilling or unable to perform the duties and powers of the office may file for voluntary discharge with the Surrogate's Court of the county that granted the personal representative's letters.

(1) A voluntary discharge filing shall include the following:

(A) A Request for Voluntary Discharge of Personal Representative form, in such form as promulgated by the Administrative Director of the Courts, containing the following information:

(i) The name of the personal representative seeking to be discharged, and the representative's address where future pleadings involving the estate can be served;

(ii) The name and address of every party in interest to the estate, and a description of that party's interest;

(iii) A statement by the personal representative that every party in interest to the estate as listed pursuant to subparagraph (ii) above, or the guardian or other legal representative of any minor or incapacitated party in interest, has consented to the voluntary discharge of the personal representative, as well as to a waiver of the additional requirement that the personal representative file a verified final account with the Chancery Division, Probate Part for adjudication, showing the true condition of the estate, in order to release any sureties on the personal representative's bond; and

(iv) A statement that the personal representative's voluntary discharge is not intended to impair the rights of any party in interest or any creditor of the estate.

(B) The written, notarized consent of every party in interest as listed pursuant to subparagraph (A)(ii) above, or that of any minor or incapacitated party's guardian or other legal representative, to the voluntary discharge of the personal representative and to the waiver of the filing of a verified final account with the Chancery Division, Probate Part for adjudication, showing the true condition of the estate, in order to release any sureties on the personal representative's bond.

(2) A voluntary discharge filing shall be accompanied by an application completed by another person to be appointed as a successor or substitute personal representative for the estate.

(3) If all parties in interest to the estate do not consent to waiving the additional requirement that the personal representative file a verified final account showing the true condition of the estate pursuant to paragraph (1) above, a verified final account shall be filed with the Chancery Division, Probate Part for adjudication. Any sureties on the bond of the personal representative shall not be released until a final judgment has been rendered on the verified final account of the estate.

(4) Notwithstanding any consent by every party in interest to waive the requirement of a verified final account of an estate, a creditor of that estate whose interest has not been satisfied may petition the Superior Court for an accounting of the estate.

(5) A personal representative shall be discharged from the further performance of the duties and powers of the office, and the personal representative's

letters revoked, upon the approval by the Surrogate's Court of the personal representative's voluntary discharge filing. The personal representative shall account for and pay over the money and assets with which the personal representative is chargeable by virtue of the office to the successor or substitute personal representative.

(6) A personal representative who is voluntarily discharged from the office pursuant to an approved voluntary discharge filing shall not be entitled to any statutory commissions relating to the performance of the duties and powers of that office.

Note: Source – R.R. 4:99-1, 5:3-2; caption of rule, and text of paragraphs (a) and (b) amended, new paragraph (c) adopted, and former paragraph (c) redesignated as paragraph (d) and amended June 29, 1990 to be effective September 4, 1990; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; new paragraph (e) adopted July 31, 2020 to be effective September 1, 2020.

4:80-2. Proof of Will: Nonresident or Deceased Witnesses

(a) Depositions of Nonresident Witnesses. If any subscribing witness to a will of any person resident or nonresident in this State, at death resides or is out of the State, the Surrogate's Court may issue a commission with a photocopy of the will attached authorizing the taking of the deposition of the witness in the form of a witness-proof. The commission may be directed to any person before whom depositions may be taken under R. 4:12-2 and 4:12-3, or to the Surrogate or Deputy Surrogate of any county of this State, who shall take the proofs under oath and certify to the taking of the same.

(b) Deceased Witnesses. If all witnesses are deceased, the signature of each such witness may be proved by one person, and the same person may prove all signatures. Proof of death of the attesting witnesses may be made by affidavit without producing certified copies of death certificates.

Note: Source – R.R. 4:99-2, 5:4-2. Paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraphs (a) and (b) amended June 29, 1990 to be effective September 4, 1990.

4:80-3. Renunciation by or Notice to Next of Kin and Others

If the application for the letters specified in R. 4:80-1(a) (except letters testamentary) is made to the Surrogate's Court by the person first entitled thereto, no renunciation or notice shall be required; but if the application is made by any other person, the applicant shall file:

(a) The renunciation, acknowledged before an officer qualified to take acknowledgments of deeds, of all competent adult persons whose right to the letters is prior or equal to that of the applicant, containing a request that the letters issue according to the application; or

(b) proof that at least 10 days' notice of the application has been given to all such persons residing in this State who have not renounced, and that at least 60 days' notice, or such notice (not less than 10 days in length) as the Surrogate's Court by order may have directed, has been given to all of them who reside outside this State. If in an application for letters of administration with the will annexed, it appears that the decedent left a will naming an executor who has not renounced, proof shall be submitted showing that like notice has been given to the executor. In any case the Surrogate's Court may require the applicant to give notice to interested persons other than those entitled to letters. Such notice may be served either as prescribed by R. 4:4-4 or by registered or certified mail return receipt requested to the person's last known address. If the name or address of any such person entitled to notice is not known, then an affidavit of inquiry as to such name or address, made as prescribed by R. 4:4-5(b) shall be filed in lieu of proof of notice.

(c) In addition to the proofs required in paragraphs (a) and (b) of this rule, if the application for letters of administration shows that there are no known next of kin or knowledge thereof, the applicant shall file proof that at least 20 days' notice of the application has been given to the Attorney General of this State.

(d) All renunciations shall be recorded by the Surrogate's Court.

Note: Source – R.R. 4:99-3. Amended July 26, 1984 to be effective September 10, 1984; former caption and text of R. 4:80-3 deleted, introductory text and paragraphs (a), (b) and (c) of former R. 4:80-4 amended, paragraph (d) adopted, and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 23, 2010 to be effective September 1, 2010.

4:80-4. Qualifications

Qualifications of executors and administrators shall be taken as provided in R. 4:96-1.

Note: New caption and text adopted June 29, 1990 to be effective September 4, 1990.

4:80-5. Residents Preferred Over Nonresidents

As between persons equally entitled, the Surrogate's Court in granting letters shall give preference to residents of this State over nonresidents, unless the best interest of the estate will not thereby be served.

Note: Source – R.R. 4:99-4. Amended July 26, 1984 to be effective September 10, 1984; amended June 29, 1990 to be effective September 4, 1990.

4:80-6. Notice of Probate of Will

Within 60 days after the date of the probate of a will, the personal representative shall cause to be mailed to all beneficiaries under the will and to all persons designated by R. 4:80-1(a)(3), at their last known addresses, a notice in writing that the will has been probated, the place and date of probate, the name and address of the personal representative and a statement that a copy of the will shall be furnished upon request. Proof of mailing shall be filed with the Surrogate within 10 days thereof. If the names or addresses of any of those persons are not known, or cannot by reasonable inquiry be determined, then a notice of probate of the will shall be published in a newspaper of general circulation in the county naming or identifying those persons as having a possible interest in the probate estate. If by the terms of the will property is devoted to a present or future charitable use or purpose, like notice and a copy of the will shall be mailed to the Attorney General.

Note: Source – R.R. 4:99-7; former R. 4:80-8 amended and rule redesignated June 29, 1990 to be effective September 4, 1990.

4:80-7. Use of Photostatic Copy Where Will Is Probated in Another State

If the will of a person resident in this State at death has been probated in another state or jurisdiction under the laws of which it cannot be removed therefrom or cannot remain in this State for permanent filing, a photocopy thereof attached and certified pursuant to Rule 902(d) of the Rules of Evidence (proof of official record) may be admitted to probate in lieu of the original will.

Note: Source – R.R. 4:99-10; former R. 4:80-11 amended and rule redesignated June 29, 1990 to be to be effective September 4, 1990; amended July 10, 1998 to be effective September 1, 1998.

[4:80-8. Notice to Creditors to Present Claims] [deleted]

Note: Source – R.R. 4:114-1 (first and second sentence). Amended July 7, 1971 to be effective September 13, 1971; amended July 22, 1983 to be effective September 12, 1983; former R. 4:96-1 amended and rule redesignated as R. 4:80-8 June 29, 1990 to be effective September 4, 1990; R. 4:80-8 deleted July 27, 2006 to be effective September 1, 2006.

4:80-9. Testamentary Trustee

If a trustee is named in or pursuant to a will duly admitted to probate or a successor trustee under a will has been appointed, the trustee shall, before exercising the authority vested by the will or the appointment, accept the trusteeship as provided by R. 4:96-1. The acceptance shall recite the names and addresses of the trustees and the persons

interested in the trust and shall identify their interests. Upon the filing of the acceptance and the power of attorney required by N.J.S.A. 3B:14-47, letters of trusteeship shall be issued by the Surrogate's Court. No application, judgment or order for the issuance of letters shall be required.

Note: Source – R.R. 4:100-1. Amended July 7, 1971 to be effective September 13, 1971; amended July 26, 1984 to be effective September 10, 1984; former R. 4:81-1 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; amended July 5, 2000 to be effective September 5, 2000.