

WHEN SOMEONE DIES


PROBATE



PROBATE
Council
for
Court Excellence

**A NON-LAWYER'S GUIDE
TO PROBATE IN
WASHINGTON, D.C.**

Council for Court Excellence



The Council for Court Excellence, founded in 1982, is a nonprofit civic organization dedicated to improving the administration of justice in the local and federal courts, and related agencies, in the Washington metropolitan area and in the nation. The Council supports useful long-term court improvements, and it publishes a variety of booklets to help people understand how their courts work.

Passage of the D.C. Probate Reform Act of 1994 marked the successful culmination of a persistent, four-year effort by the Council for Court Excellence and others to improve and simplify the process of estate administration in the District of Columbia.

This informative probate booklet was produced with financial support from GEICO, the Eugene and Agnes E. Meyer Foundation, The Max and Victoria Dreyfus Foundation, Inc., the Marpat Foundation and The Bureau of National Affairs, Inc. The Council thanks those generous contributors for their support of this important initiative.

As a nonprofit organization, the Council for Court Excellence depends on voluntary contributions from the private sector to accomplish its goals. Individuals, law firms, corporations, and foundations support the work of the Council through tax-deductible gifts. Much remains to be done, and your financial support will increase our capacity to make measurable improvements in the administration of justice in this region.

If you would like to contribute to the Council for Court Excellence, or would like more information please contact us.

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WHEN SOMEONE DIES...



A Non-Lawyer's Guide to Probate in Washington, D.C.

This educational pamphlet is presented as a public service by the Council for Court Excellence. It gives information on how to settle the financial affairs and distribute the property of a Washington, D.C. resident who has died.

This process, called “probate” or “estate administration,” can be complicated and difficult to understand. But it doesn’t have to be that way. This pamphlet is written to make your experience with the District of Columbia probate process easier.

In the pages that follow you will find answers to the following frequently asked questions:

- What is probate all about?
- What are the different kinds of probate proceedings in the District of Columbia?
- What steps are involved?
- How long will the probate process take?
- When might I need legal advice, and how do I choose a lawyer?
- What are the rights and duties of heirs and legatees?
- Where can I find more information?



If you are the **Personal Representative**—the person responsible for settling the financial affairs of a deceased relative or friend—or if you are to receive an inheritance, this pamphlet should be of help to you. (In other communities the term **Executor** is used where in the District of Columbia we use the term **Personal Representative**.) Knowing how probate works in the District of Columbia can help you save time and money during the probate process and help you to protect the assets of loved ones. Understanding the process will help you cope during the emotional turmoil that follows when someone dies.

What is probate about, anyway?

The concepts and legal language associated with the probate process can be confusing. This section will introduce some of the main ideas and phrases that you might come across while going through probate. **The meanings of words in bold are found in the Glossary of Terms at the back of this pamphlet.**

When a person dies, their money and property (called **assets**) must be located, their debts paid, and their remaining property distributed to its new rightful owners. The process of doing these acts is called **probate** or **estate administration**.

A **Will** is a legal document prepared by a person directing others how to distribute that person's assets after their death. If the person who died, called the **decedent**, left a Will, he or she is said to have died **testate**. Anyone named in the Will who is to receive some of the decedent's property is called a **legatee** or **beneficiary**.

If a person dies without leaving a Will, that person is said to have died **intestate**. District of Columbia **intestacy laws** guide the distribution of a person's property who did not leave a Will. Anyone who will receive property when there is no Will is called an **heir**.

An **interested person** is any legatee or heir who may receive property from an **estate**. In addition, as of July 1, 1995, any **creditor** who is owed more than \$500 may also be considered an interested person. A creditor is a person or company who is owed money by the estate.

The D.C. Superior Court Probate Division oversees the probate process in Washington, D.C. The **Register of Wills** is the official in the Court's Probate Division who helps the Probate Judge with administrative aspects of the probate process.

The D.C. Superior Court Probate Division works with and helps people during the administration of an estate, but Probate Division personnel are prevented by law from giving legal advice. You are responsible for protecting your own rights. If you feel you need legal advice, you should talk with a lawyer.

Remember, probate generally takes place in the city or county where the person who died was a resident. If the person who died was not a legal resident of the District of Columbia, then the probate process may not take place in the D.C. Superior Court or under D.C. probate laws.

What are the stages in the probate process?

The probate process can be broken down into four general stages:

1.

START THE PROCESS.

Find the Will and file it with the D.C. Superior Court Probate Division; obtain D.C. Superior Court appointment of the Personal Representative.

2.

GATHER AND APPRAISE THE ASSETS.

Make an inventory of the assets the decedent owned at death and determine the value of each asset.

3.

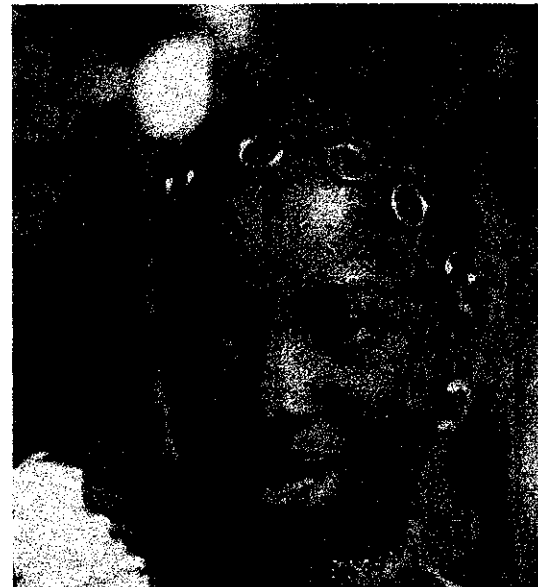
PAY THE DEBTS.

Determine the debts, taxes and settlement expenses of the estate and pay them.

4.

DISTRIBUTE THE ASSETS.

Distribute the remaining assets to the rightful beneficiaries.



**WHAT ARE THE DIFFERENT KINDS OF PROBATE
PROCEEDINGS IN THE DISTRICT OF COLUMBIA?**



In the District of Columbia, there are three different estate settlement procedures for probating an estate. By using the procedure that best suits your needs and situation, you should save time and money during the estate settlement process. The three types of estate administration are:

1.

UNSUPERVISED ADMINISTRATION

(also called informal probate administration);

2.

SUPERVISED ADMINISTRATION

(also called formal probate administration); and

3.

SMALL ESTATE ADMINISTRATION.



1.

UNSUPERVISED PROBATE ADMINISTRATION

Unsupervised administration is the main way estates are probated in the District of Columbia since July 1, 1995 as a result of the enactment of the D.C. Probate Reform Act of 1994. Estates will be probated using the unsupervised probate administration procedure unless the court orders differently.

Informal estate administration is designed for most estates where there is little or no disagreement about how the assets of the estate should be distributed. Informal administration requires very little court participation.

Because the D.C. Superior Court Probate Division does not formally supervise each step, this probate process should be quicker than supervised probate administration for most estates. Depending on its complexity, an estate using informal administration may be probated in about 6 to 9 months from the time the court appoints the Personal Representative.

Under unsupervised or informal probate administration, the Personal Representative would benefit from a lawyer's guidance but may be able to handle many settlement activities without legal assistance. That is why unsupervised probate administration will, in most cases, be less expensive than supervised probate administration.

If at any time an interested person in an estate wants the D.C. Superior Court Probate Division to review the distribution of property, the legal fees, a creditor's claim, or a serious question or concern about any other aspect of the probate process, the Superior Court stands ready to investigate the concern. The Court may hold an informal review or a formal hearing. Depending on the judge's findings, the judge may order the Personal Representative to take a particular action or may order a switch to court supervised administration for the estate.

Use the Court to Resolve Settlement Problems

If, at any time during an unsupervised or informal probate proceeding, an interested person strongly disagrees with the course of action, then that interested person should explain those concerns in writing to the D.C. Superior Court Probate Division. The Court may then temporarily supervise the probate proceeding until the specific problem is resolved. Afterward, the Court will likely return the case to unsupervised or informal administration. Thus, you can use the Court's objective position to solve problems without adding unnecessary time or expense to settling the estate. Some examples of the times you may want to call on the Court for assistance include:

- if an interested person does not accept the abilities of the Personal Representative named in the Will;
- if an interested person seeks eventual ownership of a specific heirloom when there is no Will but there is disagreement among the heirs;
- if some, but not all, interested persons agree to sell certain estate possessions before the estate is settled.

2.

SUPERVISED PROBATE ADMINISTRATION

Supervised or formal administration is designed to provide more Court involvement and oversight to the probate process. Supervised probate administration may be appropriate when: 1) the estate includes complex arrangements involving investments, real property, or other assets; 2) interested persons anticipate a dispute concerning proper distribution of assets; and/or 3) one or more interested persons question the ability of the Personal Representative to fairly oversee the estate administration during the coming year.

Supervised administration can provide added protection to the estate when the beneficiaries and the Personal Representative disagree on how to handle important aspects of the settlement process. For instance, if there are likely to be disputes among the heirs or legatees over the division of estate property, then interested persons may ask the Court to invoke formal administration.

With formal administration, the D.C. Superior Court Probate Division closely monitors the Personal Representative throughout the probate process. Certain paperwork and documents (such as inventories and periodic financial accountings of the estate's assets) must be filed periodically with the D.C. Superior Court. The Superior Court will review these materials for accuracy, completeness, and compliance with the law. If the documents filed with the Court are incorrect or are missing information, then the Superior Court will return them to be corrected.

Under formal (or supervised) probate administration, the D.C. Superior Court is required to review specific documents and filings at specific times throughout the probate process. The Court coordinates those reviews with the Personal Representative and, usually, the estate's lawyer. In most cases, this may require more time than unsupervised or informal probate administration.

Probating an estate through the supervised or formal administration procedure in the District of Columbia generally takes about 12 to 18 months to complete. Also, because of the increased complexity of most estates handled through the formal administration procedure, a lawyer's help will probably be needed at each stage of the estate administration process.

3.

SMALL ESTATE ADMINISTRATION

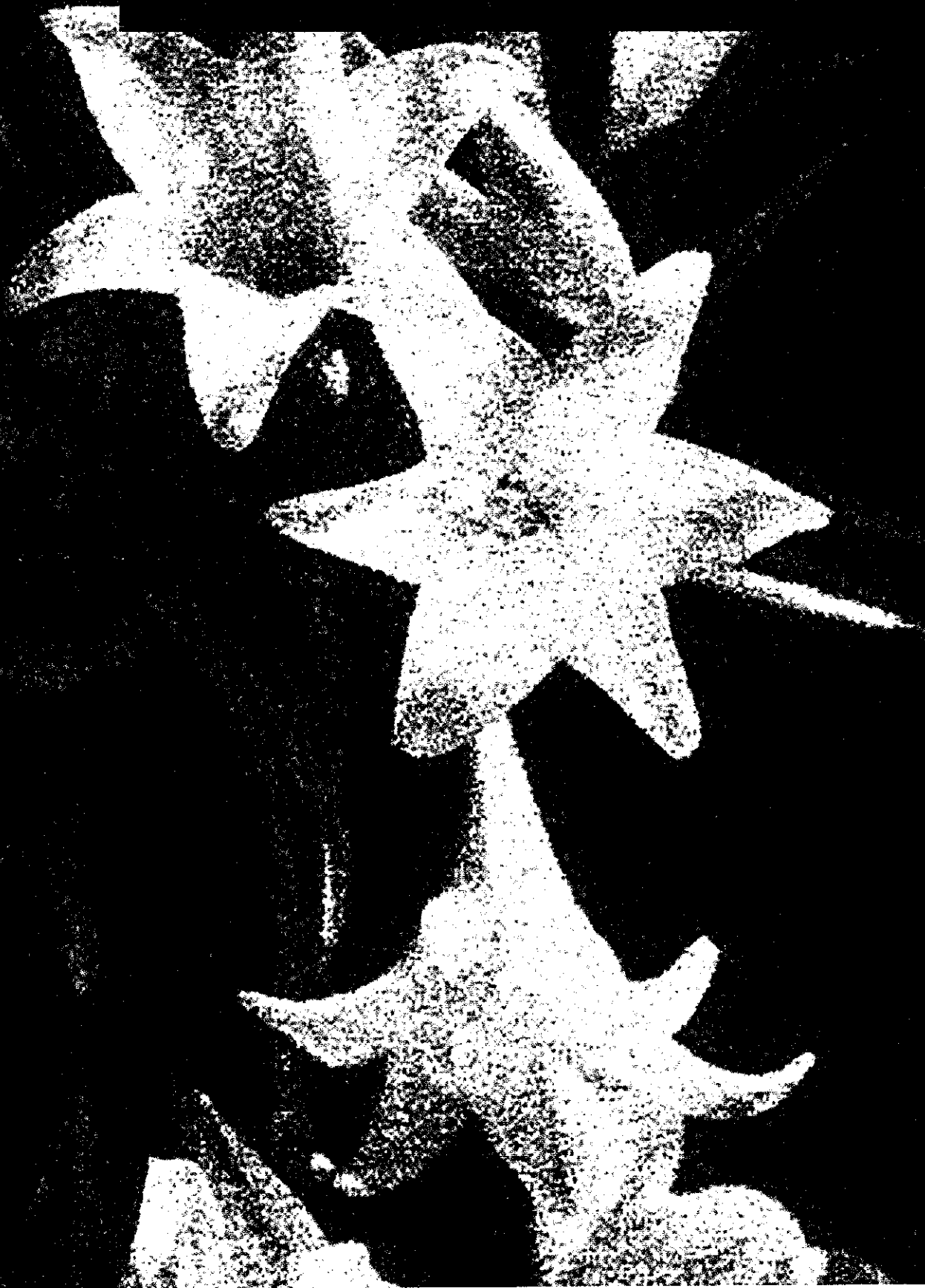
Small estate administration is a simplified way of probating a small size estate. In the District of Columbia small estate administration is available only in estates with **probate property** valued at \$40,000 or less for persons dying on or after April 26, 2001; \$15,000 or less for persons dying between July 1, 1995 and April 26, 2001; and \$10,000 or less for estates of persons dying prior to July 1, 1995. Any estate that has probate property valued at, or below, those dollar limits is called a **small estate** and is eligible for small estate administration. This is generally the simplest, fastest, and least expensive probate procedure.

Probating a small estate usually does not require a lawyer. The surviving spouse or next of kin takes the deceased person's Will, funeral bill, and other papers showing the assets (such as titles to cars and property, bank statements, bonds, and stock certificates) plus proof of any debts owed by the decedent to the D.C. Superior Court Probate Division. There, a Small Estate Specialist assists the surviving spouse or next of kin in preparing the necessary forms and gets the process started. If the paperwork is in order, the meeting with the Court's Small Estate Specialist may take only 30 minutes. Court documents given to the next of kin or surviving spouse at this meeting will aid in the transfer of the title on the car, to close bank accounts, and to claim other assets. The entire small estate administration usually takes less than 60 days. In some cases it can be completed in as few as 10 days.



The D.C. Superior Court Probate Division has an excellent ten-minute educational video on the Small Estates Process. To see the video, go to the Probate Division Information kiosk on the fifth floor of the D.C. Courthouse (500 Indiana Avenue, N.W., Washington, D.C.).

**WHAT ARE THE STEPS FOR PROBATING
AN ESTATE USING UNSUPERVISED OR
INFORMAL ADMINISTRATION ?**



Most estates in the District of Columbia will be settled using unsupervised or informal administration. This applies whether or not there is a valid written Will for persons who die July 1, 1995 or later.

1.

LOCATE AND FILE THE WILL IN COURT

(Within 90 days from death)

When someone dies, the first step in every probate process is to determine whether the deceased person, the decedent, left a valid Will. It is very important to locate the Will and any amendments to it (called **codicils**). People commonly keep their Will in strongboxes, file cabinets, desk drawers, and bank safe deposit boxes, or at their family lawyer's office.

The name and address of the lawyer who prepared the Will normally appears somewhere on the Will. Contact the lawyer by telephone to make sure that the Will you have is the most recent one prepared and ask whether the lawyer knows of any amendments to this Will.

Next, **file** the Will by taking it to the D.C. Superior Court Probate Division. Under D.C. law, the Will must be filed within 90 days of the death of the decedent.



Why You Need a Will

Here are some of the reasons why every adult should have a Will: 1) If you do not have a Will, the Court may appoint someone as Personal Representative whom you've never met, and that person, under D.C. law, will be in charge of settling your personal affairs after your death; 2) If you do not have a Will, the D.C. government could conceivably end up with all your money and property; 3) When you have a Will you choose the Personal Representative you know and trust, who will make sure your property goes to those you name in your Will; 4) A Will makes the probate process much more orderly and easier for loved ones you leave behind; and 5) You, and not a judge, get to decide who will take care of your minor children.

What Does It Cost to Prepare a Will?

For most adults, preparing a Will is not very expensive or time consuming. Because each person's life and economic circumstances are different and it is essential to follow the law, it is very advisable to have a lawyer assist you in drawing up your Will. The cost of preparing a simple Will for most people should be a few hundred dollars or less.

What if There is no Will?

Many people believe that by not writing a Will they can avoid probate. This is simply not true. When a legal resident of the District of Columbia dies without a Will, that person's property must be probated through the same Probate Court process as the property of a person who died with a Will. There are a few important differences, though.

When there is no Will that describes how to distribute the decedent's cash and property, all assets are distributed according to the District of Columbia laws governing such matters, called **intestacy laws**. D.C. intestacy laws also control who the Court can appoint as the Personal Representative. The surviving spouse or adult children are usually first in order of priority to serve. However, the intestacy laws can introduce unpleasant surprises at the very time when survivors are coping with a recent death, such as when a spouse or child is long absent or estranged and may not be the person the decedent would have selected. The best way to avoid surprises and unnecessary complications is to have a valid written Will.

Where to Keep a Will

Whether you are safeguarding your own Will or one that names you as Personal Representative or Executor, it is important to ensure immediate access to the Will. Keep in mind that a bank may automatically seal safety deposit boxes when a box holder dies. If that happens, then the bank will require a representative from the D.C. Superior Court to be present to open the safe deposit box, creating additional delay and perhaps additional expense to the estate.

If you are a Personal Representative but do not have physical possession of someone's Will, be sure you know where the Will is kept.

Often the safest place to keep a Will and have access to it in time of need is with your other important papers in your home or at your lawyer's office.

2.

FILE THE PETITION FOR PROBATE

To officially start the probate process, an **interested person** or their probate lawyer will need to file a **petition for probate** at the D.C. Superior Court Probate Division (500 Indiana Avenue, N.W., Washington, D.C.). The Petition For Probate Form asks for the names and addresses of interested persons and for a list of the decedent's assets and debts. It may be helpful to use the services of a lawyer to fill out this form and to complete the other documents to be filed with the petition. All forms filed with the Probate Division must be typewritten.

3.

APPOINTMENT OF THE PERSONAL REPRESENTATIVE

The Will typically names the decedent's choice for the Personal Representative, and the D.C. Superior Court normally honors this choice. When no Will exists, or if the Personal Representative named in the Will declines or cannot serve, the Court will appoint a Personal Representative.

The date of D.C. Superior Court appointment of the Personal Representative starts the clock running for certain time periods in which the Personal Representative, and others, have to complete certain tasks in settling an estate in the District of Columbia.

Generally, within a week of receiving the "petition for probate," the D.C. Superior Court Probate Division will issue a document called the **Letters of Administration**. This document identifies the Personal Representative as the estate's official representative and gives the Personal Representative authority to act on behalf of the decedent's estate. For example, the Personal Representative will need to show this document to a bank officer to gain access to the decedent's bank account(s). The Personal Representative should have the letters of administration in his or her possession whenever taking care of the estate's business.

What are the Personal Representative's Duties?

The Personal Representative has a legal obligation to perform his/her duties honestly and efficiently. The Personal Representative must obtain a bond to protect the interested persons to an estate unless this requirement is waived in the Will or by the interested persons themselves. The interested persons to an estate can hold the Personal Representative personally accountable for harming the estate's financial standing, regardless of whether it is intentional or accidental. The Personal Representative must gather all the property (cash and other assets) of the decedent, pay the Court costs, publication costs and bond premium (if any), pay the funeral expenses of the decedent and reasonable fees for the services of the Personal Representative and the attorney for the Personal Representative, inventory the estate assets, satisfy all tax liabilities of the estate, pay the Family Allowance and the Homestead Allowance, distribute the Exempt Property, satisfy all debts of the decedent, account to all those persons entitled to receive a distribution from the estate, and then distribute the remaining assets of the estate, without delay, to those who the Will or the intestacy laws of the District of Columbia specify are entitled to receive them.

Who Would Make a Good Personal Representative?

Needless to say, the Personal Representative should be an individual or financial institution whom the decedent trusts to carry out his or her wishes. A Personal Representative (also known as Executor of the estate outside of the District of Columbia) does not need to have special skills or knowledge. The Personal Representative may find it very beneficial to hire a lawyer or other advisor to help with the administration of the estate, especially in those situations where there are not sufficient assets in the estate to fully pay all expenses, the Family Allowance, the Homestead Allowance and the Exempt Property distribution, and all the debts of the decedent. A Personal Representative who is willing to handle some of the legwork of probate may help to save the estate time and money.



4.

PUBLISH NOTICE IN NEWSPAPER

Within 20 days from the date the D.C. Superior Court appoints the Personal Representative in an estate, the Personal Representative must publish a legal notice in a general circulation newspaper in the District of Columbia and in *The Daily Washington Law Reporter*. This legal notice must appear in the papers once a week, for three straight weeks. The notice informs potential heirs, legatees, and creditors that the Personal Representative has been appointed. It also notifies them that they have six months from the first date of publication to file claims against the estate, challenge the validity of the Will, or challenge the appointment of the Personal Representative.

The Personal Representative also must mail the interested persons a copy of the legal notice as well as a Court form called *General Information for Heirs, Legatees, and Creditors*, available from legal form stores in the District of Columbia or from the Washington Law Reporter Company. This important information must be sent by certified mail, restricted delivery, return receipt requested. The returned receipts should be saved for proof of delivery.

5.

PAYMENT OF FAMILY ALLOWANCE, HOMESTEAD ALLOWANCE, AND EXEMPT PROPERTY

As soon as practicable after the Personal Representative gains access to the decedent's bank account(s) and other assets, and following payment of:

- (a) Court costs, the costs of publishing the legal notice, and payment of the bond premium;
- (b) the first \$1500 in funeral expenses; and
- (c) fees to the Personal Representative and the Attorney for the Personal Representative (if any), up to \$1500,

the Personal Representative should proceed to satisfy the following allowances and exempt property (provided by the Omnibus Trusts and Estates Amendment Act of 2000) for the surviving members of the decedent's immediate family:

(1) The decedent's surviving spouse and any minor children or dependent children of the decedent are entitled to \$15,000 in cash or its equivalent value in personal property as a **Family Allowance**. The \$15,000 is payable to the surviving spouse; however, if a minor or dependent child of the decedent is not living with the surviving spouse, the Family Allowance may be paid partially to the child or to his or her guardian, or to another person having the child's care and custody, and partially to the spouse, as their respective needs appear.

(2) In addition, the surviving spouse is entitled to a **Homestead Allowance** of \$15,000 in cash or the equivalent value in other property of the decedent (except property that is specifically bequeathed to another in the decedent's Will, unless there are not sufficient other estate assets to satisfy the Homestead Allowance). If there is no surviving spouse, the decedent's minor and dependent children are entitled to share the Homestead Allowance equally.

If there are not sufficient funds in the estate to pay both the Family Allowance and the Homestead Allowance fully, each allowance shall be paid in an equal lesser amount.

(3) After the Family and Homestead Allowances have been satisfied, the surviving spouse is entitled to \$10,000 in value of the decedent's household furniture, furnishings, automobiles, appliances, and personal effects as **Exempt Property**. If there is not \$10,000 worth of Exempt Property in the estate, other assets of the estate may be used to make up the

\$10,000 value. If there is no surviving spouse, the decedent's children (not limited to minor and dependent children) are entitled to share the \$10,000 in Exempt Property equally.

6.

PREPARE THE INVENTORY OF ASSETS

(Within 3 months from appointment of the Personal Representative)

The Personal Representative must develop a list, or **inventory**, of all assets owned by the decedent at the time of death. This inventory of assets must be completed and sent to all interested persons within three months from the date the D.C. Superior Court appoints the Personal Representative.

In **unsupervised or informal administration** it is not necessary to file the inventory of assets with the D.C. Superior Court Probate Division, but a copy must be given to each interested person.

It is the Personal Representative's duty to find the fair market value of everything in the inventory. It may not be necessary to have property formally **appraised** in unsupervised or informal probate administration. However, it may be a good idea to get appraisals of any estate property such as real estate, jewelry, art, or other property not easily valued. The standing court appraisers are available to inventory tangible personal property of the decedent, such as household furniture, furnishings, automobiles, etc.

7.

PAY CREDITOR CLAIMS, TAXES, AND FEES

Creditor Claims

The Personal Representative is responsible for paying valid creditor claims. Remember, creditors have six months from the first published legal notice to file

claims against the estate. It is very important that the Personal Representative pay only valid claims, but it may be difficult to know whether a claim is valid. Seeking the advice of a lawyer may be wise before paying any claims to make sure that the Personal Representative pays no invalid claims, pays no claim too early in the administrative process, and overlooks no valid claims.

Taxes

The Personal Representative is responsible for preparing and filing tax returns for the estate when required. The following types of tax returns may need to be filed as part of the estate administration:

1. Decedent's D.C. (form D40) and Federal (form 1040) personal income tax returns
2. D.C. (form D41) and Federal (form 1041) fiduciary income tax returns
3. D.C. and Federal estate tax returns if all the property which passes to another by reason of the decedent's death (not just probate assets) including life insurance proceeds and other distributions resulting from a beneficiary designation or "POD" designation, and property which passes to a joint owner by "right of survivorship" exceeds \$675,000 for those estates of decedents dying in 2001; \$1,000,000 in 2002 and 2003; \$1,500,000 in 2004 and 2005; \$2,000,000 in 2006-2008; and \$3,500,000 in 2009.

To receive the tax forms and information about how and where to file the necessary tax forms, you may contact the D.C. Office of Tax and Revenue (202/727-4829) or the United States Internal Revenue Service (202/622-5000).

Settlement Fees

Expenses incurred to settle the estate are paid with the estate's money. For example, the D.C. Superior Court charges a fee for estate administration. Regardless of whether the estate administration is formal or informal, the basic Court fee is the same and is determined by the value of the estate. You should contact the D.C. Superior Court Probate Division for information on these estate costs.

Other reasonable expenses of probate administration must also be paid. Examples are fees of the estate's lawyer, Personal Representative, appraiser, and tax preparer.



8.

PREPARE THE FINAL ACCOUNTING

The Personal Representative is responsible for preparing a final **accounting** of the estate's assets and debts. The final accounting is completed once the inventory of assets has been sent to interested persons and any outstanding debts and taxes have been paid. The final accounting is a detailed balance sheet that shows the value of all the estate's assets, along with any income or interest earned, debts paid, money owed, and tax payments made. The final accounting must be sent to all interested persons for their review and approval. An interested person has sixty days to object to the prepared final accounting. A mistake in the final accounting may directly affect the size of an interested person's **inheritance**.

9.

DISTRIBUTE THE ASSETS

The Personal Representative oversees the distribution of the estate's remaining assets to survivors and/or other beneficiaries, according to the Will's instructions or where there is no Will according to the D.C. intestacy laws. Generally, final distribution of the assets of an uncomplicated estate in an unsupervised probate administration case should occur 6 to 9 months after death. The laws in the District of Columbia provide that the Personal Representative may be held personally responsible for wrongful distribution of property or assets belonging to the estate.

10.

CLOSE THE ESTATE

If no objection to the final accounting is made by interested persons and all assets of the estate have been distributed, then the unsupervised estate administration can be concluded by filing a Certificate of Completion with the D.C. Superior Court Probate Division. Your attorney can help with preparation and filing of the Certificate of Completion.

If no certificate of completion is filed, the appointment of the Personal Representative will terminate automatically three years from the date of appointment, unless an extension is requested.

WHAT ARE THE STEPS FOR PROBATING AN ESTATE USING SUPERVISED OR FORMAL ADMINISTRATION?



Although settling an estate using the **supervised or formal probate administration** procedure follows many of the same steps outlined on the preceding pages for unsupervised administration, there are important differences.

If you are involved in a formal estate administration case, then you should refer to the D.C. Code, D.C. Superior Court rules and case law and/or consult a probate lawyer for more information.

HELPFUL TIPS FOR PERSONAL REPRESENTATIVES



Remember, it is the Personal Representative's responsibility to prepare complete and accurate accounts. Mistakes and missing information on accounts slowed down over half of the formal probate administrations filed in D.C. Superior Court in 1994. Be sure to follow the rules listed below when preparing accounts in order to complete the probate process as quickly and easily as possible:

- answer *all questions* on *all* appropriate forms;
- supply *all* documents requested by the Court;
- *watch the calendar* to avoid missing filing deadlines;
- *file all tax returns* for the decedent and the estate;
- give a copy of the *inventory* and *final accounting* to all interested persons;
- distribute property in accordance with the Will or intestacy laws;
- be sure assets are reported correctly;
- keep a *complete* record of estate bank statements, cancelled checks, and receipts; and
- keep a *complete* record of estate income, deposits, expenses, and property distributions.

CHOOSING AND USING A LAWYER



DECIDING IF YOU NEED A LAWYER

Personal Representatives are expected to carry out their duties according to high standards and may be held personally responsible if those legal standards are not followed. You may avoid costly errors later if you seek the guidance and help of a lawyer or other advisor early in the probate process.

For example, a lawyer experienced in D.C. probate law can help you determine which type of probate procedure best suits the estate. A lawyer also can help you, as Personal Representative, understand your obligations from the beginning to the end when you file the Certificate of Completion and final tax returns.

SELECTING A LAWYER

The Personal Representative selects a lawyer for the estate if one is needed. One option is to use the same lawyer the decedent used to prepare the Will. There is no obligation to use this lawyer's services, but since the lawyer wrote the Will, he or she is already familiar with the estate. Make sure that the lawyer you use is experienced in probate matters in the District of Columbia.

Another option is to ask a lawyer you already know to recommend a good probate lawyer. Be sure to ask the lawyer you know why they think the probate lawyer they are recommending is good.

A third option is to ask a friend or relative who has recently gone through the probate process about their lawyer. Were they satisfied with the advice and service given by the lawyer? What was the lawyer's total fee? Was this more or less than the estimate given? Did your friend or relative feel the lawyer treated them courteously? Would they hire this lawyer again? If you get a good report, then this lawyer may also be a good choice.

Finally, you might call the Legal Information Help Line number listed in the back of this pamphlet or consult the phone directory under "Lawyers Referral Service." These free or reduced fee services help many people find a lawyer.

INTERVIEWING THE LAWYER

The Personal Representative should call and make an appointment to interview one or more lawyers experienced in probate matters before selecting one to help with the estate administration. Be clear that you want to speak to the lawyer regarding the possibility of handling the probate of an estate in the District of Columbia. Make it clear that you have not yet decided who to hire as the estate's lawyer. Some lawyers charge no fee for this first meeting. You should ask if there will be a charge before the meeting.

When you meet with the lawyer, you will need to describe the facts of the estate and answer any questions. You should bring the Will and the preliminary inventory with you if you have made one. You should ask the lawyer to explain the probate process and to give you a timetable of what will probably happen. You might wish to ask the following types of questions:

- As the designated Personal Representative, what will your role be?
- What are the lawyer's, and the staff's, hourly fees?

- Will the lawyer give you a written estimate of the total fee?
- Which of the three main probate procedures provided under D.C. probate law does the lawyer recommend for this case?
- Does the lawyer anticipate any problems or complications?
- As the designated Personal Representative, can you expect to be compensated for your own time and effort?

The lawyer should give clear answers and explanations. The lawyer should make you feel comfortable and reassure your doubts. Finally, the lawyer's fees should seem reasonable. If they don't seem reasonable, you should say so. The lawyer should explain to your satisfaction why the proposed fees are as quoted and may be willing to lower them.

LAWYERS' FEES

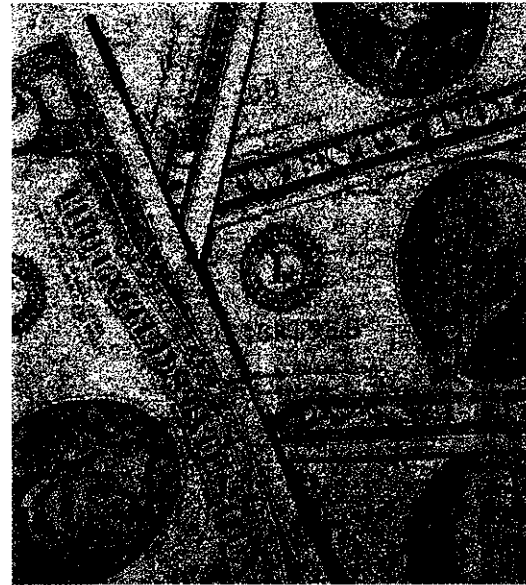
D.C. law requires lawyers to estimate fees in advance for probating estates. The law also says fees are to be determined on the basis of the amount of work performed, the reasonableness of the time spent, the responsibilities assumed, and the results achieved.

When the Personal Representative hires a lawyer to help probate the estate, then the lawyer must give the Personal Representative a written estimate of the fees to be charged. If major changes in the original estimate develop unexpectedly, then the lawyer will revise the estimate in writing to the client.

However, it is important to remember that the actual fee should be based on the amount of work necessary and not on the value of the estate.

Some of the most common areas where misunderstandings and problems are encountered regarding lawyers' fees are listed below:

- the lawyer overstating the time needed to perform a task;
- non-lawyers giving legal advice and asking to be paid at a lawyer's rate;



- charging for work not performed; and
- charging hourly rates which seem too high for the type of work done.

Remember, the Personal Representative and interested persons are responsible for making sure lawyers' fees are reasonable. If you suspect that any fees associated with settling an estate in the District of Columbia are too high, ask the estate's lawyer to explain them. If you are not satisfied by the lawyer's answer, you may request the D.C. Superior Court Probate Division to review the particular fees you are concerned about. The D.C. Superior Court may schedule a court hearing to examine the fees charged by the estate's lawyer or by other advisors employed by the estate.

**RIGHTS AND DUTIES OF BENEFICIARIES,
HEIRS, AND LEGATEES**



The laws of the District of Columbia provide beneficiaries (whether **heir** or **legatee**) with certain rights and duties when an estate is being probated. The following information briefly outlines those rights and duties. If you are an heir or legatee or beneficiary of an estate in the District of Columbia and have questions that are not answered here, you may wish to seek the advice of a lawyer experienced in probate matters.

- An heir or legatee has a legal right to receive copies of the estate papers. These papers include but are not limited to the following:
 - the Will,
 - the inventory (including all appraisals),
 - all **accounts**, and
 - fee requests by the Personal Representative and the estate's lawyer.
- The D.C. probate laws provide that the surviving spouse and the decedent's minor and dependent children are entitled to receive a **Family Allowance** of up to \$15,000 and the surviving spouse is entitled to receive a **Homestead Allowance** of \$15,000 and \$10,000 in value of **Exempt Property**. These allowances and exemption are to be satisfied promptly after the court appoints the Personal Representative and are deducted from the assets of the estate. (For more information, see #5, page 14.)
- Most beneficiaries in uncomplicated estates should normally expect to receive most of their share of the estate proceeds during the normal course of the probate process or within six to nine months of the appointment of the Personal Representative by the court.
- An heir or legatee always has the right to hire a lawyer who will represent his or her interest in



questions of the heirs and legatees, the heirs and legatees always have the right to hire a different lawyer who will represent their particular interest in the estate. If you are an heir or legatee in an estate and hire a lawyer to represent your interest in the estate, then *you*—and not the estate—will be responsible for paying the lawyer.

- An heir or legatee has 6 months to challenge the validity of the Will from the date when the Personal Representative publishes the first newspaper notice of his or her appointment. To contest the Will, a formal **pleading** must be filed with the D.C. Superior Court Probate Division. (The assistance of a lawyer is strongly advised in such a situation.)
- If an heir or legatee believes there is a problem or error in any of the items listed below and cannot obtain a satisfactory response from either the Personal Representative or the estate's lawyer, the heir or legatee should feel free to send a written objection to the D.C. Superior Court Probate Division.
 - the Will
 - the inventory (contents or value)
 - the contents of any account
 - the fee requested by the Personal Representative and/or the estate's lawyer

- In most estates in the District of Columbia, an heir or legatee has the right to require that the Personal Representative take out a bond to protect the heir's or legatee's interest in the estate. A bond works something like an insurance policy, protecting your interest in the estate during the probate process.
- Property of the estate may be sold to pay the debts of the decedent or for other reasons. If an heir or legatee has an interest in a particular piece of property of the estate which may be sold, then he or she should contact the Personal Representative or the estate's lawyer promptly.
- An heir or legatee has the duty to inform the Personal Representative of all matters that will aid in the administration of the estate. These matters include notifying the Personal Representative of all assets of the estate or the location of a Will if one exists but has not been found. The heir or legatee may also want to offer assistance to the Personal Representative, as such aid may speed up the settlement of the estate and may help lower the cost of probating the estate.
- If the estate is following supervised rather than unsupervised estate administration procedures, two types of audit may be conducted by the D.C. Superior Court Probate Division of the Personal Representative's records and the accounts filed with the D.C. Superior Court. If the heirs or legatees are satisfied with the Personal Representative's work and agree to a brief court review of the account, the Court's Probate Division will conduct what is called a "cursory" review. Otherwise, the Probate Division of the D.C. Superior Court will conduct a detailed audit of the estate's accounts. Depending upon the size of the estate, such a detailed audit may cause additional expense and time to settle the estate.

What if there is a problem?

If a problem arises at any point in the settlement of an estate, you should first deal directly with the Personal Representative or the estate's lawyer. If as an heir or legatee or as a creditor you are not satisfied with the handling of your concerns, you should feel free to write to the D.C. Superior Court Probate Division, referencing the name of the estate and the estate administration number, if known. Note your objection and the reasons in writing, and send them to the Probate Division of the Superior Court of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001.

A copy of the written objection filed with the Court also must be sent to the Personal Representative by the interested person. In many cases before the court will act on the concerns raised in your letter you may be asked to send a copy of your letter to each of the other interested persons as well.

CASE DIARY AND IMPORTANT DEADLINES

Write Date Here:

1. Date of Death _____
2. Date of Filing of Will with D.C. Superior Court (within 90 days of death)* _____
3. Date of Court's Order Appointing Personal Representative
(Letters of Administration) _____
4. Date of First Newspaper Notice to Creditors
(within 20 days of the appointment of the Personal Representative)* _____
5. Date of Notification to Interested Persons
(within 20 days of the appointment of the Personal Representative)* _____
6. Date of Inventory of Assets Provided to all Interested Persons
(Within 3 months of the appointment of the Personal Representative)* _____
7. Expiration Date for Filing of Estate Creditors' Claims
with the Personal Representative
(within 6 months of the date of first legal notice publications)* _____
8. Personal D.C. and Federal Income Tax Returns Due
(April 15 of year after death) _____
9. Federal Estate Tax Return Due
(9 months from the date of death) _____
10. District of Columbia Estate Tax Return Due
(10 months from the date of death) _____
11. D.C. and Federal Estate Income Tax Return Due
(3 1/2 months from end of each tax year of estate) _____
12. Automatic Termination of Unsupervised Personal Representative's
Appointment (3 years from date of appointment) _____
13. In Supervised Administration Cases - First Account Due with Court
(One year from the date of first public legal notice)-(#4 above)* _____
14. In Supervised Administration Cases - Date of Filing Later
Accounts with the Court _____
15. Date Estate Closed _____
16. Date Certificate of Completion is filed with the D.C. Superior Court _____

* Time lines specified in 1994 D.C. Probate Reform Act

GLOSSARY OF TERMS

- account:** The details of income and expenses relating to the estate.
- appraisal:** Formal written determination of the value of the decedent's property at the time of death.
- assets:** Money and property a person owns, including any debts that others owe to that person.
- beneficiary:** A person or charitable organization who receives or is entitled to receive a portion of the estate.
- codicil:** A written amendment to a Will that makes some change to the terms of that Will.
- creditor:** A person or organization owed money by the decedent.
- decedent:** The person who died.
- estate:** The general word for referring to the assets of the decedent.
- estate administration:** Formal procedure for identifying the decedent's assets, paying his or her debts, and distributing remaining property to beneficiaries.
- exempt property:** \$10,000 in value of household furniture, furnishings, automobiles, appliances and personal effects of the decedent to the surviving spouse. If there is no surviving spouse, the decedent's surviving children are entitled to share the same value equally. If the value of the exempt property is less than \$10,000, other assets of the estate, if any, may be used to make up the difference.
- family allowance:** A \$15,000 distribution in cash or in personal property at its fair value, for the maintenance of the surviving spouse and the minor and dependent children of the decedent during the period of estate administration.
- file:** To submit or make application with the appropriate governmental authorities, as in to file a Will with the D.C. Superior Court Probate Division.
- heir:** a person who may inherit property when there is no Will. If there is a Will, this person is called a "legatee."
- homestead allowance:** A \$15,000 allowance for the surviving spouse. If there is no surviving spouse, the decedent's minor and dependent children are entitled to share the homestead allowance equally.
- inheritance:** Assets received from the decedent's estate.
- interested person:** Any heir of the decedent, or legatee named in the Will who may receive property. After July 1, 1995, in the District of Columbia any creditor with a claim of \$500 or more may also be an "interested person."
- intestacy laws:** Laws that determine who will inherit property when there is no Will.

- intestate:** Describes the legal situation when a person dies without a valid written Will. Intestate is the opposite of testate.
- inventory:** A detailed list of all assets owned by the decedent at the time of death and the value of each. The inventory list also may show appraisal information.
- legatee:** A person who may inherit property when there is a Will. If there is no Will this person is called an "heir."
- letters of administration:** The document issued by the D.C. Superior Court Probate Division appointing the Personal Representative. This document gives the Personal Representative the authority to act on behalf of the estate. A final order serves this purpose in small estates.
- non-probate property:** Property of a decedent which passes to a new owner automatically and thus is not subject to the probate process, such as life insurance or pension benefits not payable to the estate and property owned jointly with a right of survivorship. Such property is part of the deceased's estate for tax purposes.
- Personal Representative:** Person named in the Will or appointed by the D.C. Superior Court to settle the financial affairs of someone who has died. Commonly known as the executor of the estate.
- petition for probate:** The document that is filed by the Personal Representative or probate lawyer with the D.C. Superior Court to start the probate process. This required court filing starts the clock on all subsequent automatic deadlines for other actions leading up to closing the estate.
- pleading:** Formal legal documents presenting various information to the Court.
- probate:** Legal process where property of someone who has died is distributed and debts are paid.
- probate property:** Property that is subject to the probate process, such as money and property titled in the sole name of the decedent. Also see non-probate property.
- Register of Wills:** Official of the D.C. Superior Court Probate Division who helps the Probate Judge with the administrative duties of probate.
- right of survivorship:** When two or more people share the ownership of property or money in such a way that, when one of them dies, the surviving person is entitled to ownership of the part previously owned by the decedent.
- small estate:** An estate with probate property worth \$40,000 or less.
- small estate administration:** One of the three estate administration procedures in the District of Columbia. A simple, quick and inexpensive probate procedure, administered by the D.C. Superior Court Probate Division and available only to Small Estates.

supervised

administration: One of the three estate administration procedures in D.C. Formal procedure that requires D.C. Superior Court supervision and approval at major steps in the probate process.

testate: Describes the legal situation when a person dies with a valid written Will giving the decedent's instructions for distribution of property. Testate is the opposite of intestate.

unsupervised

administration: One of the three estate administration procedures in D.C. The informal procedure requires little or no ongoing case supervision by D.C. Superior Court after the appointment of the personal representative.

Will (Last Will

and Testament): A written and properly executed document that gives instructions on how a person wants his or her property distributed after death.

HELPFUL CONTACTS AND INFORMATION SOURCES

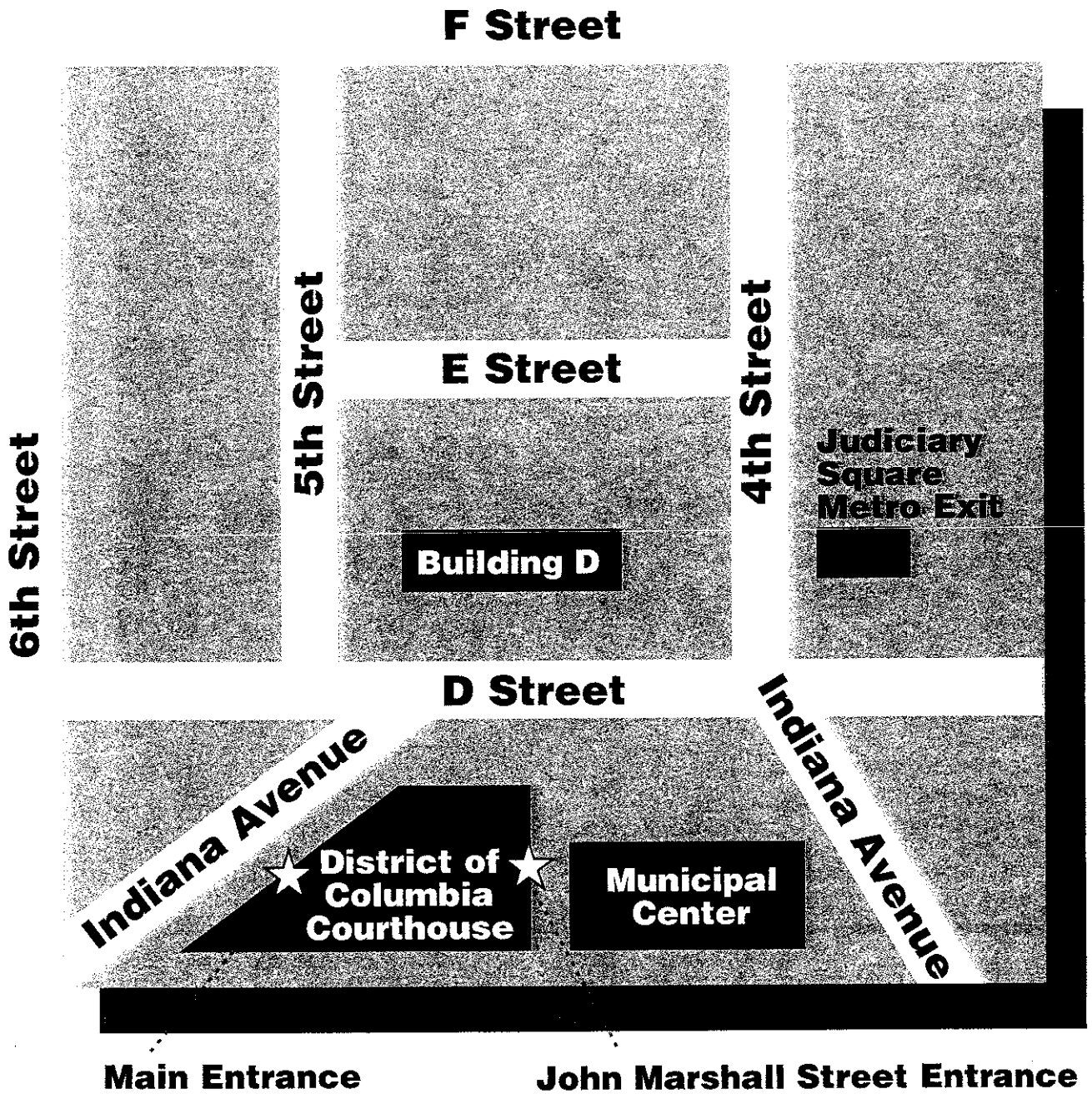
- Superior Court of the District of Columbia
500 Indiana Avenue, N.W.
Washington, D.C. 20001
General Information Line
(202) 879-1010
- Probate Division/Register of Wills' Office
Superior Court of the District of Columbia
Fifth Floor
500 Indiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-1499
- D.C. Superior Court Probate Information Kiosk
—Shows 3 different informational videos on the D.C. probate process in both English and Spanish.
Superior Court of the District of Columbia
500 Indiana Avenue, N.W.
Washington, D.C. 20001
(5th Floor, at entrance to Probate Division office)
- The District of Columbia Bar
—The *Legal Service Source Book* is free in person, \$5.00 by mail.
6th Floor
1250 H Street, N.W.
Washington, D.C. 20005
(202) 737-4700

It is also available free on the Bar's Website (www.dcbbar.org) in the "public and consumer information" section.
- The D.C. Bar's Legal Information Help Line
—Taped explanations of various legal issues. Probate issues are under the heading of "Family Law Issues."
(202) 626-3499
- Legal Counsel for the Elderly
American Association of Retired Persons (AARP)
601 E Street, N.W.
Washington, D.C. 20004
(202) 434-2170
- For tax information:

U.S. Internal Revenue Service
(202) 622-5000

D.C. Office of Tax and Revenue
(202) 727-4829

JUDICIARY SQUARE AREA



PERSONAL AFFAIRS RECORD BOOK

YOUR QUICK REFERENCE FINANCIAL AFFAIRS LOCATOR

The Council for Court Excellence also publishes a *Personal Affairs Record Book*, which helps people catalog and identify the location of their important personal and financial information, as an aid to themselves and their family members. The **Quick Reference Financial Affairs Locator** is a part of the *Personal Affairs Record Book* and is provided here as a checklist to indicate the location of important papers. Please indicate on the lines below the specific location (e.g., your bank safe-deposit box, the top left drawer of your desk, etc.) where you keep each of these papers. If an item does not apply, put NA for Not Applicable.

1. Bank Statements for Checking Account
2. Bank Statements/Passbooks for Savings Account
3. Birth Certificate
4. Birth Certificates of Children
5. Adoption Certificates of Children
6. Passport
7. Naturalization Paper
8. Marriage Certificate(s)
9. Last Will and Testament
10. Divorce Papers
11. Safe Deposit Box Key
12. Deed to Home

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PERSONAL AFFAIRS RECORD BOOK

YOUR QUICK REFERENCE FINANCIAL AFFAIRS LOCATOR

13. Insurance Policy/Records
14. All of your Vehicles: Model/Registration/Titles/Papers
15. Stock Certificates/Records
16. Bond Certificates/Records
17. Mutual Funds Certificates/Records
18. Military Records/Papers
19. Records of Debts Owed to You
20. Mortgage/Home Equity Loan Payment Book/Statements
21. Credit Cards/Statements
22. Loan Papers/Records
23. Post Office Box Key/Combination
24. Social Security Card
25. Cemetery Plot Papers/Records
26. Previous Income Tax Returns/Records

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About the Council for Court Excellence

Formed in Washington, D.C. in January 1982, the Council for Court Excellence is a nonprofit, nonpartisan, civic organization. The Council works to improve the administration of justice in the local and federal courts and related agencies in the Washington metropolitan area and in the nation. The Council accomplishes this goal by:

- Identifying and promoting court reforms,
- Improving public access to justice, and
- Increasing public understanding and support of our justice system.

The Council is governed by a volunteer Board of Directors composed of members of the judicial, legal, business, and civic communities. The Council is unique in bringing together all of those communities in common purpose to address court reform and access to justice needs. The Board accomplishes the work of the Council through direct participation in Council committees. The Council employs a small staff to assist the Board in meeting the objectives of the organization. Financial support comes from members of the Board, businesses, law firms, individuals, and foundations.

The Council for Court Excellence has built a substantial record of success in the major court reform initiatives it has undertaken. The Council has been the moving force behind adoption of the one day/one trial jury system in the D.C. Superior Court, modernization of the jury system, reform of the District of Columbia probate laws and procedures, expansion of crime victim rights, improvement in court handling of child abuse and neglect cases, and proposing methods to speed resolution of civil cases by the D.C. trial and appellate courts. To improve the public's access to justice and increase their understanding of our justice system, the Council over the years has published and disseminated over 250,000 copies of plain-language booklets and other materials explaining a wide variety of court systems.

The Council's Board of Directors has set the following major program priorities:

- Efficiencies and Technology in Courts and Related Agencies
- Children in the Justice System
- Publicly Funded Legal Representation
- Criminal Justice and Sentencing

The Board has further directed that all Council initiatives be guided by the following:

- Recognition of the changed demographics of our region, and
- Recognition of the importance of performance measurement in the delivery of public services.

THE COUNCIL FOR COURT EXCELLENCE

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