

# GUIDE TO BEING A PERSONAL REPRESENTATIVE IN ARKANSAS

*When a Resident and Property Owner in Arkansas Dies, the Estate Is Required to Pass Through a Legal Proceeding Known as Probate; the Personal Representative Is the Person Responsible for Overseeing this Process*



DEBORAH SEXTON

ARKANSAS ESTATE PLANNING ATTORNEY

When a resident and property owner in Arkansas dies, the estate is required to pass through a legal proceeding known as [probate](#). Whether or not the person had a will, “administration” of the estate through the probate court, is required. The Personal Representative is the person responsible for overseeing this process.

## **WHAT IS THE PURPOSE OF PROBATE?**

Administration of the estate is necessary to collect the property and assets, protect that property and pay any debts and taxes that are owed. The probate process also allows the court to determine who is entitled to shares of the estate and then distribute those shares to the appropriate parties.

## **WHAT IS A PERSONAL REPRESENTATIVE?**

The Personal Representative is the person held responsible for proper “settlement” of the estate. If an individual dies with a will (known as “testate”), the will usually identifies the Personal Representative that individual chose to serve in that capacity. If an individual dies without a will (or “intestate”), then someone can petition the court for appointment of a Personal Representative.



Typically, a surviving spouse has first priority, followed by any surviving children. If there is no spouse or child, then other qualified persons may be chosen by the court.

## **WHO CAN SERVE AS A PERSONAL REPRESENTATIVE?**

Anyone who is over the age of 21, of sound mind and able to obtain a surety bond, is eligible to serve as Personal Representative. Some banks or trust companies are also allowed to serve as Personal Representatives. In Arkansas, they must also be residents of the state unless they have appointed someone to take service of process in the county. The Personal Representative is often in control of substantial property and funds. Therefore, the court will generally require a bond be posted to secure proper performance by the Personal Representative.

## **WHAT ARE THE PERSONAL REPRESENTATIVE'S DUTIES?**

The Personal Representative is expected to be the impartial representative of all parties who have an interest in the estate. Basically, the Personal Representative must take possession of the property and then distribute it appropriately, according to the will or the laws of intestate succession. Following are some of the duties usually required.



The role of Personal Representative officially begins when the court provides either letters testamentary or letters of administration, depending on whether or not there was a will. The Personal Representative should then provide a copy of the will and death certificate to the probate court.

An inventory of the property contained in the estate should be made and a list of liabilities created. The law requires that the Inventory be filed within 60 days after the Personal Representative has been appointed. The property should also be appraised in order to provide an accurate value.

Once valid creditors have been determined, the debts must be paid from the estate's funds, along with funeral expenses, if applicable. After creditors are paid, the remaining assets are then distributed to beneficiaries. Part of being a Personal Representative means keeping accurate records of all transactions. That is because the Personal Representative is required to provide the court with a final accounting before the estate will be closed.

## **HOW LONG WILL THE PROCESS TAKE?**

It is not easy to predict how long the administration of any estate will take, as every estate and its complexities is different. Time must be allowed for creditors to file



claims against the estate, once notice has been published. The final accounting cannot be filed until that period, which is normally six months, has

ended. Then the approval hearing will be held no less than six months after the final accounting has been filed with the court. Most estates take at least eight months to settle.

Filing of federal estate tax returns will also affect the length of the probate process. The federal estate tax return must be filed no later than nine months after the date of death, and the estate should not be closed until that tax return is filed and approved.

## **WHY DOES IT TAKE SO LONG?**

The [probate process](#) can be lengthy for many reasons. As you have seen, the Personal Representative has many tasks to complete, including inventorying the property, notifying creditors, distributing assets and making a final accounting. The real estate must be appraised, which takes time. Notice to creditors requires placing a notice in the local newspapers and allowing them time to respond with any claims against the estate.

## **SHOULD A PERSONAL REPRESENTATIVE HIRE AN ATTORNEY?**

**Yes.** An attorney will be the Personal Representative's closest adviser. In fact, the law anticipates the hiring of an attorney to assist in preparing the court documents required and to ensure that the Personal Representative complies with all probate laws.

## **DO PERSONAL REPRESENTATIVES RECEIVE PAYMENT FOR THEIR SERVICE?**

The law recognizes the substantial responsibility placed on a Personal Representative. Therefore, each state has a schedule of fees to be paid to the Personal Representative, based on the size of the estate and the amount of time involved in managing it. This fee is then considered a legitimate expense of probate.

# About the Author

## Deborah K. Sexton



As the sole attorney in the Fayetteville law firm of Deborah Sexton Law Office, Deb oversees a practice devoted to providing clients with the best in estate planning.

Deborah Sexton, C.P.A., J.D., L.L.M., combines an extensive background in accounting with a wide range of legal experience to provide her clients with a uniquely practical perspective. An attorney since 1983, she now devotes her practice primarily to estate planning and elder law.

### EXPERIENCE

After obtaining her undergraduate degree in accounting from Abilene Christian University in Abilene, Texas, she worked in Dallas in public accounting for several years, and then went to the University of Arkansas Law School in Fayetteville. Upon graduating from law school, she went on to obtain an L.L.M. degree in Taxation from New York University.

### **Deborah Sexton Law Office**

[www.arkansas-estateplanning.com](http://www.arkansas-estateplanning.com)

2766 Millennium Drive

Fayetteville, AR 72703

Phone: (479) 443-0062

Fax: (479) 443-2001