

# Probate Proceeding Checklist

(see Surrogate's Court Form P-1, rev. 2/08)

This Checklist is provided for your convenience while completing the petition and the checklist should not be returned to the Court.

If the will was previously admitted to probate the petitioner should submit Administration c.t.a. form CTA-1.

**Check All Forms To Make Sure Venue Is Correct - Appropriate County Is Listed**

**Fill In All Areas On All Pages of Petition - Also Mark When Not Applicable Where Necessary**

PET #	DESCRIPTION	YES	NO
	Is the captioned name the same as the signature on the Will and ¶2 of petition?		
	If A/K/A's, are they listed in the caption and also under ¶2 of petition?		
	Has the type of Letters been checked?		
1.(a)	<p><b>Is the name of each fiduciary the same as in Will?</b></p> <p>If <u>NO</u>, does petitioner explain why?</p> <p><b>Is the petitioner ... the nominated executor</b></p> <p><b>alternate executor</b></p> <p><b>or person eligible under SCPA §1402 or 1418 (admin. c.t.a.)</b></p> <p><i>NOTE: A Non-domiciliary alien is ineligible to be sole fiduciary (SCPA §707)</i></p>		
1.(b)	<b>If an attorney and sole executor: has a statement been filed pursuant to Court Rules §207.16(e)?</b>		
1.(c)	<b>Has SCPA §2307-a been complied with?</b>		
2.(a)	<p><b>Is the name of the decedent the same as the signature on Will?</b></p> <p>Are all A/K/A's listed?</p>		
2.(b)	<p><b>Does date of death agree with death certificate?</b></p> <p>Certified death certificate must be filed with petition</p>		
2.(c)	<b>Is the place of death the same as that listed on death certificate?</b>		
2.(d)	<p><b>Is the address on petition and death certificate the same? this county?</b></p> <p>If <u>NOT</u>, has an explanatory affidavit with proofs of domicile been filed? (SCPA §206 &amp; 208)</p> <p><b>If decedent was a non-domiciliary of the State, has information been furnished pursuant to SCPA §1605 showing ...</b></p>		

PET ¶ #	DESCRIPTION	YES	NO
2.(d) cont.	(1) no original probate or administration proceeding has been or will be filed in any other jurisdiction  (2) statement that testator left probatable assets in this jurisdiction  (3) statement listing the distributees in the domiciliary jurisdiction or that they are the same as under New York State Law		
2.(e)	<b>Is the citizenship of decedent listed?</b>  <i>NOTE: Does all information provided under ¶2 agree with death certificate; if not, has an explanatory affidavit been provided? Check that marital status is correct; submit divorce decree if requested by the court.</i>		
3.	<i>Make sure that original will and codicil are filed with affidavit(s) of attesting witnesses or necessary documents requesting that the affidavits be dispensed with are filed. (With one surviving witness submit form P-8; if all witnesses are deceased submit forms P-8 and P-9 for one witness and P-9 for decedent.)</i>  <b>Are dates listed correctly for Will and Codicils?</b>  <b>Are all witnesses listed correctly?</b>  <b>If necessary - did witnesses see original will or a court-certified copy? see SCPA §1406(2)</b>  <b>Is affidavit of comparison with copy of will (&amp; codicils) submitted?</b>  <i>NOTE: Witnesses may not notarize each other's signatures on witness depositions.</i>		
4.	<b>Answer "NONE" or specify?</b>		
5.	<i>NOTE: Distributee: Any person entitled to take/share in property under EPTL §4-1.1 and 4-1.2.</i>  <b>Has the number of survivors been listed?</b>  <b>Has "NO" been inserted in all prior classes?</b>  <b>Has an "X" been inserted in all subsequent classes?</b>  <i>NOTE: If alleged that the decedent was survived by no distributee or only one distributee or where the relationship of distributees to the decedent is grandparents, aunts, uncles, first cousins or first cousins once removed, has an Affidavit of Heirship been submitted - see Court Rules §207.16(c).</i>		
6.(a)	<b>Are all distributees (who are of full age and sound mind) listed with the required information? (Court needs Form P-4 [Acknowledged Waiver of Process/Consent to Probate] see SCPA §401(4), or proposed citation for each person listed under 6(a). Provide copy of death certificate or date of death for any deceased distributee.) NOTE: Administrator c.t.a. see SCPA §1418 - use waiver P-11.</b>		

PET #	DESCRIPTION	YES	NO
6.(a) cont.	<p>Is each person designated as primary executor listed?</p> <p>Are all persons adversely affected by the purported exercise by such Will of any power of appointment listed?</p> <p>Are all persons adversely affected by any codicil listed?</p> <p>Are all persons listed under any other Will of the decedent on file in the Surrogate's Court listed?</p> <p>If there is an inter vivos trust or other testamentary substitute, are trustees and beneficiaries affected by the will listed?</p> <p>Has a copy of the Trust been submitted?</p>		
6.(b)	<p>Same as 6.(a) above but are persons under disability</p> <p><i>NOTE: IF THERE ARE PERSONS UNDER DISABILITY LISTED UNDER 6(b) A GUARDIAN AD LITEM WILL HAVE TO BE APPOINTED AND A CITATION ISSUED. (see SCPA §306 &amp; 307)</i></p> <p><i>NOTE: THE FOLLOWING INFORMATION HAS TO BE PROVIDED UNDER 6(b) AND 7(b) IF THERE ARE PERSONS UNDER DISABILITY.</i></p> <p><u>INFANTS:</u></p> <p>Name, birth date, relationship to decedent, domicile/residence address, person with whom he/she resides</p> <p>Is there a court-appointed guardian? If so, submit name and residence address and information regarding appointment (submit proof of appointment).</p> <p>Are parents living?</p> <p><u>ALL OTHER PERSONS UNDER DISABILITY:</u></p> <p>Name, relationship to decedent, residence address</p> <p>Facts regarding disability: has a committee, conservator, guardian, or any other fiduciary been appointed (submit proof of appointment)</p> <p>Has the person under disability been committed to any institution?</p> <p>Are the names and addresses of any committee, person or institution having care and custody of him/her, conservator, guardian and any relative or friend having an interest in his/her welfare listed?</p> <p>If a person is confined as a prisoner: place of incarceration listed and name and address of any person(s) having an interest in his/her welfare</p> <p>Unknowns: described in the same language as will be used in the citation</p>		

PET ¶ #	DESCRIPTION	YES	NO
6.(b) cont.	<p><b>NOTE: IF THERE ARE UNKNOWNNS, the following proof has to be submitted:</b>  <i>affidavit showing that diligent efforts have been made to locate unknown distributees or distributees whose whereabouts are unknown [Court Rules §207.16(d)]</i></p> <p><b>“DILIGENT SEARCH” requires extensive research, e.g.:</b>  <i>cemetery and marriage records; telephone books; conversation with other distributees, neighbors, etc.; records of varied Surrogate’s Court; military records; Bureau of Immigration &amp; Naturalization; Social Security Administration; Bureau of Vital Statistics; Department of Motor Vehicles; Bureau of the Census; City directories; Internet</i></p>		
7.(a)	<p><b>Court needs Form P-6 [Notice of Probate/Affidavit of Mailing] for all persons listed under 7(a) &amp; 7(b) - see SCPA §1409.</b></p> <p><b>Are the names and domiciliary addresses of all substitute or successor executors, trustees, guardians listed? If predeceased - provide death certificate or date of death.</b></p> <p><b>Are all legatees (any person designated to receive a transfer by will of personal property) who is of full age and sound mind listed?</b></p> <p><b>Are all devisees (any person to whom real property is transferred by will) who is of full age and sound mind listed?</b></p> <p><b>Are all other beneficiaries, who are of full age and sound mind, named in the will listed?</b></p> <p><b>Are charities receiving a residuary share? If so the State Attorney General must receive a notice of probate.</b></p> <p><b>Are any trustees and beneficiaries of any inter vivos trust designated in the purported will other than those named in paragraph 6 listed?</b></p>		
7.(b)	<p><b>Same as 7.(a) above but are persons under a disability (see ¶6b). see SCPA §1409(2) and SCPA §307(3) and (4).</b></p>		
8.	<p><b>Has “NONE” been entered or is there an indication of the confidential relationship? (May require a PUTNAM hearing.)</b></p>		
9.(a)	<p><b>Has value of estate been listed? (do not include joint assets, insurance left to a beneficiary, non-probate assets)</b></p>		
9.(b)	<p><b>Has “NONE” been entered or has cause of action been specified?</b></p>		
10.	<p><b>Under WHEREFORE Clause: has type of letters and all relief requested been checked and completed?</b></p>		

PET #	DESCRIPTION	YES	NO
10. cont.	<p><b>Is petition dated, signed, verified, properly notarized (including proper jurat and expiration date of notary's commission)?</b></p> <p><b>Is oath and designation signed?</b></p> <p><b>does it set forth proposed fiduciary's physical address?</b></p> <p><b>Is proposed fiduciary a Bank? use combined corporate verification, consent and designation [use page 6 of the petition]</b></p> <p><b>Is attorney's name, address and phone number listed?</b></p> <p><b>Is Part 130 Certification completed by attorney or self-represented party?</b></p> <p><b>if <u>NOT</u>, has a separate certification as to Part 130 signing requirements been included?</b></p>		
<p><b>If forms are computer generated, has a certification pursuant to Court Rules §207.4 been attached?</b></p>			

PARTIAL FEE SCHEDULE	SCPA/EPTL§ or Rule #														
<p><b>Have the proper fees been included with petition?</b></p> <p>Fees per schedule; \$6.00 for each Certificate of Appointment.</p> <p>Filing fee is based upon the values of the estate owned individually by the decedent or payable to the Estate - see SCPA §2402(8)</p> <table data-bbox="203 1354 730 1627"> <tr> <td>0 but under 10,000</td> <td>\$ 45.00</td> </tr> <tr> <td>10,000 but under 20,000</td> <td>75.00</td> </tr> <tr> <td>20,000 but under 50,000</td> <td>215.00</td> </tr> <tr> <td>50,000 but under 100,000</td> <td>280.00</td> </tr> <tr> <td>100,000 but under 250,000</td> <td>420.00</td> </tr> <tr> <td>250,000 but under 500,000</td> <td>625.00</td> </tr> <tr> <td>500,000 and over</td> <td>1,250.00</td> </tr> </table> <p>If Letters of Trusteeship are requested include an additional \$45.00 for this appointment (after checking with individual court of filing as to fee policies).</p>	0 but under 10,000	\$ 45.00	10,000 but under 20,000	75.00	20,000 but under 50,000	215.00	50,000 but under 100,000	280.00	100,000 but under 250,000	420.00	250,000 but under 500,000	625.00	500,000 and over	1,250.00	2402
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250,000 but under 500,000	625.00														
500,000 and over	1,250.00														

COMMENTS AND COURT NOTES		Form Number	SCPA/EPTL § or Rule #
When Permitted	Whenever decedent dies with a Will.		1402
Forms Always Required	<ul style="list-style-type: none"> <li>•Petition for Probate</li> <li>•Original Will of decedent and Codicil(s), if any</li> <li>•Affidavit of Comparison (unless waived by court)</li> <li>•Certified Death Certificate</li> <li>•Affidavit of Attesting Witnesses</li> <li>•Self-addressed stamped envelope (if court requires)</li> </ul>	P-1  P-13  P-3	1402  207.15(b) 1406
Forms or Documents Sometimes Required	<ul style="list-style-type: none"> <li>•Application to Dispense with Testimony of Attesting Witness</li> <li>•Waiver of Process; Consent to Probate</li> <li>•Notice of Appearance</li> <li>•Authorization to Appear on Behalf of Party</li> <li>•Attorney/Fiduciary Statement</li> <li>•Family Tree Chart (if required by court)</li> <li>•Affidavit Proving Handwriting of Decedent/Witness</li> <li>•Renunciation of Nominated Executor and/or Trustee</li> <li>•Renunciation of Letters of Admin. c.t.a./Waiver of Process</li> <li>•Affidavit of No Debt (Admin. c.t.a.)</li> <li>•Citation on Probate</li> <li>•Affidavit for Supplemental Citation</li> <li>•Order for Mailing and/or Publication</li> <li>•Notice to Consul General</li> <li>•Notice of Probate &amp; Affidavit of Service</li> <li>•Affidavit of Due Diligence</li> <li>•Application for Preliminary Letters Testamentary &amp; Oath &amp; Designation of Preliminary Executor</li> <li>•Sole Heir Affidavit</li> <li>•Affidavit of Service (Personal/Mail/Publication)</li> <li>•Affidavit as to Military Service</li> <li>•Bond</li> <li>•Death Certificate of deceased spouse, distributee, beneficiary or named executor</li> <li>•Notice of Election by Surviving Spouse</li> <li>•Waiver or Release of the Right of Election</li> <li>•Obituary Notice (if court requires)</li> </ul>	P-8 P-4    FT-1 P-9 P-10 P-11 P-12 P-5    P-6  P-2	1405     207.16(e) & 2307-a 207.16(c)  1403          1412  207.16(c) 314  801-805 207.15(c)  5-1.1 5-1.1

## COMMENTS AND COURT NOTES (continued)

All Waivers and Proofs of Service must show that each interested party actually received a copy of the Will.

Proofs of Service of Citation must be filed with the Court at least two (2) working days before the return date.

Guardian Ad Litem will be appointed on or before the return day of process for all unknowns and persons under disability (SCPA §403).

Petition & Notice of Probate must include names of all persons designated in Will as legatee, devisee, fiduciary or alternate fiduciary not otherwise listed as an interested party.

Letters will not be delivered until Notice of Probate and Mailing Affidavit are filed.

Review carefully instructions to paragraphs 6 and 7 of the Petition and be sure interested parties are listed in the correct places.

NYS Department of Taxation & Finance may be a necessary party for estates of non-domiciliary decedents. Review SCPA §1403(1)(g).

Documents signed by Power of Attorney (Provide certified copy of POA and comply with Section 13-2.3 EPTL and 207.48 Uniform Rules).

Check to be certain all documents are properly acknowledged.

**THIS MATERIAL IS PROVIDED FOR INFORMATIONAL/TRAINING PURPOSES ONLY.** – It is intended for use in conjunction with review of the applicable statutes and rules of the Surrogate's Court and the Surrogate's Court Operations Manual.