STATE OF NEW YORK
TIOGA COUNTY SURROGATE'S COURTS
20 COURT STREET, P.O. BOX 10
VILLAGE OF OWEGO, NY, 13827
PHONE: 607 - 689 - 6099
FAX: 646 - 963 - 6398
EMAIL: TiogaSurrogateCourt@nycourts.gov

HON. GERALD A. KEENE
Surrogate

DEBORAH A. STONE
Chief Clerk of Surrogate's Court

INSTRUCTIONS FOR COMPLETING AN ARTICLE 13 AFFIDAVIT - ESTATES HAVING PERSONAL PROPERTY OF THE DECEDENT NOT TO EXCEED $30,000 (INVOLVING NO REAL PROPERTY). EXEMPT PERSONAL PROPERTY ONLY PERTAINS TO SURVIVING SPOUSE OR CHILDREN - SECTION 5-3.1 EPTL (attached).

(A) Name of deceased.

(B) Name of person wishing to become the Voluntary Administrator (see attached copy of the law that pertains to "persons who may become a Voluntary Administrator).

Renunciation of Voluntary Administrator Form - anyone who has a prior to equal right to petition the court to become a voluntary administrator must execute this form and have it notarized.

(1) Addressed of the proposed Voluntary Administrator.

(2) Relationship of the proposed Voluntary Administrator to the deceased.

(3) This section pertains to the deceased. (Name, residence, date of death, place of death and citizenship.

(4) If he/she died without a Will, check **"Intestate"**.
If he/she died and with a Will, check **"Testate"**.

(5) Please read carefully.

(6) List next of blood relative. For example, wife and children. If no wife and children, then grandchildren. If no grandchildren, then father and mother. If no father and mother, then brothers and sisters.

A **Family Tree** form must be filed, this shows the family structure. The family tree should show any predeceased next of kin, and their closest living relative. For example, if the deceased is only survived by children and one of which died before the deceased and that pre-deceased child had children, those must be noted on the family tree and the affidavit. The family tree must be completed by a **disinterested party** with a statement of how they are personally familiar with the family history (such as family friend, neighbor, minister, relative that does not hold an interest in this estate).

For all next of kin listed, there must be a complete mailing address for each (including zip code).

(7) This applies only if the deceased had and Will and if he/she did, then you must list all beneficiaries (persons receiving something under the Will).

(8) Read carefully.

(9) This is the section where you list the assets of the decedent for you will need a certificate from the court to take to the person or bank holding the asset.

If **bank accounts**, the court needs the name of the bank, account number and approximate amount in the bank.

If there are **stocks**, the court needs the certificate numbers, company and approximately value of the stock.

If there is a **motor vehicle**, the serial number and the approximate value of the vehicle.

If there are any **guns**, the make, model, caliber or gauge, and serial number are required. Additionally, there is a Firearms Inventory form which is required. The original Firearms Inventory is to be filed with Surrogate's Court and you must send a copy to the Division of Criminal Justice Services as instructed on the form.

Please be as specific as possible.

(10) List all liabilities of the deceased.

(11) Read carefully.

(12) Read carefully.

(13) Read carefully.

The Affidavit should be signed before a notary public and the notary should affix his/her stamp to the affidavit.

IN ADDITION TO THE ABOVE, THE COURT REQUIRES:

1. Certified copy of the death certificate
2. Family tree (to be completed by **disinterested party** w/notarized statement of how he/she knows the decedent's family)
3. Copy of funeral bill
4. Original Will (if applicable)
5. Copy of death certificate(s) of distributees (if applicable)

COURT FILING FEE: $1.00

ALSO INCLUDE **ADDRESSED STAMPED PLAIN ENVELOPES WITH THE ADDRESSES COMPLETED FOR THOSE PERSONS LISTED UNDER NUMBERS 6 AND 7 OF THE AFFIDAVIT**. These are used for the mailing of the Notice to each person listed as required by law.

a2j Access To Justice
AT CHICAGO-KENT COLLEGE OF LAW

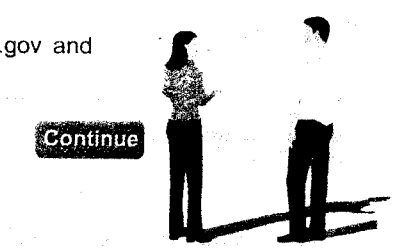
www.nycourthelp.gov

New York State Courts
Access to Justice Program

Welcome! Use a computer program to make your court papers or get more information to help you in court.

Visit www.nycourthelp.gov and try DIY Forms.

It's free!
It's helpful!
It's easy to use!



SURROGATE'S COURT FORMS

NYS DIY DO-IT-YOURSELF Forms

Free and easy guided step-by-step programs to help you fill out Surrogate's Court forms.

These computer programs ask you questions. The program then uses your answers to prepare instructions and court forms for your case.

AVAILABLE NOW!

- **Safe Deposit Box Petition**
- **17-A Guardianship Petition**
- **Small Estate Affidavit**

Check for these and others on www.nycourthelp.gov

ACCESS TO JUSTICE
NY STATE COURTS

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF _____

----------X

VOLUNTARY ADMINISTRATION, Estate of

_____,

Deceased.

----------X

STATE OF NEW YORK)
COUNTY OF _____) ss.:

AFFIDAVIT IN RELATION TO SETTLEMENT OF ESTATE UNDER ARTICLE 13, SCPA

File No. _____
(as of 1/2009)*

(INSTRUCTIONS: In completing this form, answer each question. This may be done in some instances by crossing out words in parentheses and in some instances by inserting the required information.)

I, _____, being duly sworn, depose and say

(1) My permanent address is: _____
(Street Address) (City/Town/Village)

_____
(County (State) (Zip) (Telephone Number)

My mailing address is: _____
(If different from permanent address)

(2) My interest is: [ ] Distributee of decedent _____
(Relationship)

[ ] Other (Specify) _____

(3) The name, permanent address, date, place of death, and citizenship of the decedent, to whose estate this proceeding relates, are as follows:

Name of Decedent (a/k/a, if applicable): _____

Permanent Address: _____
(Street Address) (City/Town/Village) (County) (State)

Date of Death: _____ Place of Death: _____
(City/Town/Village) (State)

Citizenship: _____

(4) Decedent died: [ ] Intestate (without a will)
[ ] Testate (the original will is attached)

(5) A search of the records of the Court shows that no application has been made in the estate of the decedent for voluntary administration, letters of administration or for probate of a will, and your affiant is informed and verily believes that no such application ever has been made to any other Surrogate's Court in this state.

SE-3A *For use only where decedent died on or after January 1, 2009

(6) The names and addresses of the decedent's distributees under New York law, including non-marital children and descendants of predeceased non-marital children, and their relationships to the decedent, are as follows: (If more space is needed, add a sheet of paper)

Name	Post Office Address (Including Zip)	Relationship Indicate if non-marital)
_____	_____	_____
_____	_____	_____
_____	_____	_____

(7) (If decedent had a will) The names and addresses of all beneficiaries in the will of the decedent filed herewith are as follows: (If more space is needed, add a sheet of paper)

Name	Post Office Address (Including Zip)	Bequest
_____	_____	_____
_____	_____	_____
_____	_____	_____

8) The value of the entire personal property, wherever located, of the decedent, exclusive of joint bank accounts, trust accounts, U.S. savings bonds POD (payable on death), and jointly owned personal property, or property exempt under the EPTL §5-3.1, **does not exceed $30,000.00.**

9) The following, exclusive of joint bank accounts, trust accounts, U.S. savings bonds POD (payable on death), and jointly owned personal property, or property exempt under EPTL §5-3.1, is a complete list of all personal property owned by the decedent, either standing in his/her own name or owned by him/her beneficially and including items of value in any safe deposit box. (If more space is needed, add a sheet of paper)

Items of Personal Property Separately Listed	**Value of Each Item**
_____	_____
_____	_____
_____	_____

TOTAL $ _____

(10) All the **liabilities** of the decedent known to me are as follows: (If more space is needed, add a sheet of paper)

Name of Creditor	Amount Owed
_____	_____
_____	_____
_____	_____

(11) I undertake to act as voluntary administrator/trix of the decedent's estate, and to administer it pursuant to Article 13 of the Surrogate's Court Procedure Act. I agree to reduce all of the decedent's assets to possession; to liquidate such assets to the extent necessary; to open an estate bank account in a bank of deposit or savings bank in this state, in which I shall deposit all money received; to sign all checks drawn on or withdrawals from such account in the name of the estate by myself, as voluntary administrator/trix; to pay the expenses of administration, the decedent's reasonable funeral expenses and his/her debts in the order provided by law; and to distribute the balance to the person or persons and in the amount or amounts provided by law. As voluntary administrator/trix, I shall file in this court an account of all receipts and of disbursements made.

(12) I understand that this proceeding will not determine the estate tax liability, if any, in the event that the decedent had any interest in real property or any joint bank accounts, trust accounts, U.S. savings bonds POD (payable on death), or jointly owned or trust property.

(13) If letters testamentary or of administration are later granted, I acknowledge that my powers as voluntary administrator/trix shall cease, and I shall deliver to the court-appointed fiduciary a complete statement of my account and all assets and funds of the estate in my possession.

_____
Signature of Affiant

_____
Print Name

Sworn to before me on

_____, 20 _____

_____
Notary Public
My Commission Expires:
(Affix Notary Stamp or Seal)

Signature of Attorney: _____

Print Name: _____

Firm Name: _____ Tel. No.: _____

Address of Attorney: _____

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF _____

VOLUNTARY ADMINISTRATION, Estate of

_____,

Deceased.

RENUNCIATION OF VOLUNTARY ADMINISTRATION
(as of 6/91)

File No. _____

TO THE SURROGATE'S COURT:

The undersigned, whose domiciliary address is

_____
(Street Address) (City/Town/Village) (State) (Zip)

Mailing Address _____
(If different from domicile)

being of full age and [check and complete]

[ ] a distributee of the above-named decedent and related as a

_____
(state relationship)

[ ] a fiduciary or legatee named in the decedent's will dated _____

hereby personally appears herein and renounces all right to act as voluntary administrator/rix of the goods, chattels and credits of the decedent.

_____
(Renouncing Party)

_____
(Print Name)

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the _____day of_____,20__, before me personally came _____, known to me to be the individual described in and who executed the foregoing instrument, and to me such person duly acknowledged that he/she executed the same.

_____
Notary Public

My commission expires: _____

Signature of Attorney: _____
Print Name of Attorney:_____
Firm Name:_____Tel. No._____
Address of Attorney:_____

SE-1C

SURROGATE'S COURT OF THE STATE OF NEW YORK TIOGA **COUNTY**

In The Matter of the Estate of

FIREARMS INVENTORY
(SCPA §2509)

_____

_____ Deceased.

FILE NUMBER _____

The undersigned, [ ] a fiduciary, or [ ] an attorney of record certifies that the following firearms, as defined by Section 265.00 of the Penal Law, make up part of the decedent's estate.

Name of Fiduciary or Attorney: _____

(Address, if changed): _____

	Make:	Model:	Caliber or Gauge:	Serial #:	Valuation:
1					$
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
			TOTAL:		

☐ *(mark box if more entries are necessary - and attach extra pages)*

ATTORNEY

Name: _____

Address: _____

_____

Telephone: _____

Certified to be true on _____, 20____

_____

Signature

_____

Print Name

✳ *A copy of this Inventory must also be filed with DCJS at:*

Division of Criminal Justice Services
Alfred E. Smith Building
80 South Swan Street
Albany, NY 12210

Firearms Inventories filed with the Surrogate's Court will be kept in a secure location separate from the estate file and will be made available for inspection only to persons interested in the proceeding and their counsel, unless otherwise ordered by the Court.

FAMILY TREE

Cross Out Class That is Not Applicable

Children *or* Brothers/Sisters

Grandchildren *or* Nieces/Nephews

Great Grandchildren *or* Grandnieces/Grandnephews

_____
Decedent

_____
Name of Spouse

____Deceased_____
Date

____Divorced_____
Date

____Never Married

STATE OF NEW YORK
COUNTY OF

_____ being duly sworn, states that the chart and statement of disinterested party are accurate.

_____

Sworn to me on _____

_____
NOTARY PUBLIC

STATEMENT OF DISINTERESTED PARTY

My name is _____ and I am a disinterested party of this estate. I have known the decedent and his/her family for ____ years as a _____ [i.e., friend, neighbor, relative, minister, etc] and that I have personal knowledge of this family.
Address: _____

Form FT-1

Grandparents	Aunts and Uncles	First Cousins #	**First Cousins Once Removed #
		(___)_____	(___)_____
	_____	(___)_____	(___)_____
		(___)_____	(___)_____
			(___)_____
		(___)_____	(___)_____
	_____	(___)_____	(___)_____
		(___)_____	(___)_____
			(___)_____
_____		(___)_____	(___)_____
Paternal Grandfather	_____	(___)_____	(___)_____
		(___)_____	(___)_____
_____	_____		(___)_____
Paternal Grandmother	Father of Decedent		
		(___)_____	(___)_____
	_____	(___)_____	(___)_____
		(___)_____	(___)_____
			(___)_____
		(___)_____	(___)_____
	_____	(___)_____	(___)_____
		(___)_____	(___)_____
			(___)_____
_____		(___)_____	(___)_____
Maternal Grandfather	_____	(___)_____	(___)_____
		(___)_____	(___)_____
_____	_____		(___)_____
Maternal Grandmother	Mother of Decedent		

Chapter 5

SMALL ESTATE ADMINISTRATION (VOLUNTARY ADMINISTRATION) AND AVOIDING ADMINISTRATION

SYNOPSIS

PART A: PROCEDURAL CONTEXT

§ 5.01 Procedural Context—Small Estate Administration

PART B: OBTAINING LETTERS OF VOLUNTARY ADMINISTRATION

§ 5.02 Checklist for Obtaining Letters of Voluntary Administration

§ 5.03 Qualifying As Small Estate

§ 5.04 Determining Who May Act As Voluntary Administrator

[1] Determining Who May Act As Voluntary Administrator If Decedent Died Intestate

[2] Determining Who May Act As Voluntary Administrator If Decedent Died Testate

§ 5.05 Qualifying As Voluntary Administrator

[1] Considering Timing for Qualifying

[2] Commencing Proceeding for Voluntary Administration

[3] Preparing Qualifying Affidavit

[4] Filing Supplemental Materials

[5] Filing Qualifying Affidavit

[6] Obtaining Evidence of Appointment

[7] Recognizing Small Estate Administration of Other Jurisdictions

[8] Avoiding Need for Bond or Receiving Compensation

PART C: ADMINISTERING SMALL ESTATE

§ 5.06 Checklist for Administering Small Estate

§ 5.07 Fulfilling Powers and Duties of Voluntary Administrator

[1] Fulfilling Duties of Voluntary Administrator

[2] Exercising Powers of Voluntary Administrator

[3] Terminating Powers of Voluntary Administrator

§ 5.08 Assessing Effect of Summary Procedures

PART D: RECEIVING FUNDS FROM DECEDENT'S DEBTORS WITHOUT ADMINISTRATION

§ 5.09 Checklist for Receiving Funds from Decedent's Debtors Without Administration

§ 5.10 Paying Claims and Delivering Assets Without Administration

[1] Satisfying the Requirements for Paying Assets Without Administration

[2] Making Payments to Surviving Spouse

[3] Making Payments to Close Family Members

[4] Making Payments to Distributees and Creditors of Decedent

[5] Discharging Debtor

[6] Considering Accountability of Payee

§ 5.11 Paying Court Fees

PART A: PROCEDURAL CONTEXT

§ 5.01 Procedural Context—Small Estate Administration

SCPA Article 13 allows for abbreviated court involvement for the administration of estates consisting of personal property having a de minimis gross value of $30,000 or less after certain exclusions are made. *See* § 5.03 *below*. The provisions are applicable to the estates of both domiciliary and nondomiciliary decedents. Article 13's provisions are not mandatory and are intended to be remedial, therefore they are given a liberal construction. *See* SCPA 1301(1), 1309(1) and 1312. When deciding whether to utilize the small estate (or "voluntary") administration provisions of Article 13, consideration should be given to the following:

1. Voluntary administration will cost the estate significantly less in administration expenses because no bond must be posted, no commissions are paid and legal fees may be eliminated;
2. Voluntary administration can accelerate significantly the time required to completely administer and settle an estate, because formal court proceedings are dispensed with and assets may be marshaled and distributed with limited time restrictions;
3. Voluntary administration does not formally release the voluntary administrator from liability for actions taken as voluntary administrator, because interested parties may challenge the acts of the voluntary administrator in the future;
4. A voluntary administration proceeding does not determine estate tax liability; and
5. A voluntary administrator cannot enforce a claim for wrongful death or personal injuries to the decedent.

Historical Note: Prior to January 1, 2009, the limitation on small estate administration was $20,000. *See Matter of Garrick*, 26 Misc. 3d 789, 894 N.Y.S.2d 836 (Sur. Ct. New York County 2009), holding that the increase is retroactive.

PART B: OBTAINING LETTERS OF VOLUNTARY ADMINISTRATION

§ 5.02 Checklist for Obtaining Letters of Voluntary Administration

☐ Determine whether estate qualifies as small estate. SCPA 1301. *See* § 5.03 *below*.

☐ Determine who may act as voluntary administrator. *See* § 5.04 *below*.

- ○ If decedent died intestate, apply statutory order of priority. SCPA 1303.
- ○ If decedent died testate, named executor has priority unless he or she renounces.
- ○ If executor renounces, any adult entitled to petition for letters of administration with Will annexed may act (SCPA 1418).

☐ Obtain "Renunciation of Voluntary Administration" (Official Form SE-1C) from each person with prior right to act as voluntary administrator who is not seeking appointment. SCPA 1303. *See* § 5.05[4] *below*.

☐ Prepare and file "Affidavit in Relation to Settlement of Estate" (Official Form SE-2A) *See* § 5.05[2], [3] *below*.

☐ File supplementary documents with Affidavit, including death certificate, original Will, renunciations, if applicable, death certificates of any deceased distributee. *See* § 5.05[4] *below*.

☐ Obtain "short certificate" from court for each item of decedent's personal property. SCPA 1304(5). *See* § 5.05[6] *below*.

☐ If additional items of personal property are found after voluntary administrator is appointed, file "Amended Affidavit in Relation to Settlement of Estate" (Official Form SE-2B) to obtain additional short certificates. *See* § 5.05[6] *below*.

§ 5.03 Qualifying As Small Estate

An estate qualifies for voluntary administration if it consists of personal property having a gross value of $30,000 or less exclusive of the following:

1. Property required to be set off to the decedent's family as exempt property under EPTL 5-3.1(a)(1), (2), (3), (4) and (5) including:
   a. Housekeeping utensils, musical instruments, furniture, computers, appliances, fuel and clothing worth up to $20,000;
   b. Certain family memorabilia, including the family bible,

family pictures and books, worth up to $2,500;

c. Domestic animals and certain farm machinery and equipment, worth up to $20,000;

d. A motor vehicle worth up to $25,000; and

e. Up to $25,000 in money or marketable securities.

2. Property passing by operation of law, such as:

a. Joint bank accounts;

b. Trust accounts;

c. United States savings bonds payable to another;

d. Payable on death accounts;

e. Jointly owned personal property;

f. Life insurance payable to another; and

g. Retirement benefits payable to another.

See SCPA 1301(1).

Small estate administration is available only for the decedent's personal property and is not available for the administration of real property. Although the ownership of real property will not prevent use of the provisions to administer the decedent's personal property, formal probate or administration proceedings are still necessary to administer any real property. *See* SCPA 1302.

Strategic Point: Although voluntary administration is not mandatory, the courts encourage its use when it is available. *See Matter of Sherwood*, N.Y.L.J., Oct. 23, 1997, at 31 (Sur. Ct. Nassau County) (drastically reducing legal fees because the decision to offer the Will for probate rather than voluntary administrating was "fundamentally wrong, wasteful of estate assets and simply not necessary").

After factoring in all excluded property, the total value of a decedent's gross estate could far exceed $30,000 and still permit use of the expedited procedures of small estate administration.

PRACTICE RESOURCES:

- *Warren's Heaton on Surrogate's Court Practice* §§ 37.01, 37.02, 37.03, 37.04.

- *Cox, Arenson & Medina, New York Civil Practice: SCPA* ¶¶ 1301.01 et seq., 1302.01 et seq.
- *New York Practice Guide: Probate and Estate Administration* §§ 2.01, 2.02.
- *Bender's Forms for the Civil Practice* Form No. SCPA 1304:1A.

§ 5.04 Determining Who May Act As Voluntary Administrator

[1] Determining Who May Act As Voluntary Administrator If Decedent Died Intestate

If the decedent dies intestate, the right to act as a voluntary administrator is first given, in descending order of priority, to:

1. A spouse;
2. A child or grandchild;
3. A parent;
4. A sibling;
5. A niece or nephew;
6. An aunt or uncle;
7. The guardian, committee or conservator of any distributee of the decedent who is under a disability; and
8. The public administrator or chief fiscal officer of the county in those counties where a public administrator has not been appointed.

See SCPA 1303(a).

A voluntary administrator must be an adult and, if he or she is a child, grandchild, parent, sibling, niece, nephew, aunt or uncle, he or she must also be a distributee of the decedent. *See* SCPA 1303(a). To qualify as a voluntary administrator, a person must satisfy the court that all persons in a class of higher priority are unable or unwilling to serve. Priority within a class depends on who files first so that, for example, if the decedent is survived by both children and issue of a predeceased child, a grandchild distributee who makes and files the affidavit before a child distributee will be entitled to act as voluntary administrator. *See* SCPA 1303(a). *See Matter of Ortega*, 14 Misc. 3d 312, 823 N.Y.S.2d 884 (Sur. Ct. New York County (2006) (personal representative of deceased or absent distributee may not serve).

A voluntary administrator does not need to be a resident of New York. *See* SCPA 1303.

Strategic Point: Whether a non-resident alien may serve as a

voluntary administrator is not clear. SCPA 707 prohibits the issuance of letters to a non-resident alien. Although a voluntary administrator is not issued letters, this prohibition would presumably still apply. It is clear, however, that a personal representative of a deceased or absent distributee may not qualify as a voluntary administrator and must seek full administration. *Matter of Fussell*, 34 A.D.3d 164, 821 N.Y.S.2d 733 (4th Dep't 2006).

[2] Determining Who May Act As Voluntary Administrator If Decedent Died Testate

If the decedent dies leaving a last Will and testament, the named executor or alternate executor has priority to act as voluntary administrator if the Will is filed with the Surrogate's Court and the required qualifying affidavit is filed within 30 days of filing the Will. *See* SCPA 1303(b).

If the named executor or alternate executor renounces the right to act or fails to qualify within the 30-day time period, any adult person who would be entitled to petition for letters of administration with the Will annexed under SCPA 1418 may file the affidavit and be entitled to act as voluntary administrator. *See* SCPA 1303(b). This could include a non-distributee who is a beneficiary under the Will or the fiduciary of a beneficiary, a creditor, any other person interested in the estate or the public administrator or chief fiscal officer of the county. *See Matter of Baker*, 146 Misc. 2d 161, 549 N.Y.S.2d 604 (Sur. Ct. Rensselaer County 1989) (applying discretion to accept application of assignee of creditor where no other interested party came forward).

PRACTICE RESOURCES:

- *Warren's Heaton on Surrogate's Court Practice* §§ 37.05, 37.07, 37.11.
- *Cox, Arenson & Medina, New York Civil Practice: SCPA* ¶¶ 1303.01, 1303.02, 1303.03, 1303.04.
- *New York Practice Guide: Probate and Estate Administration* § 2.03.

§ 5.05 Qualifying As Voluntary Administrator

[1] Considering Timing for Qualifying

Small estate administration is available immediately after the death of the decedent without a waiting period but need not be commenced within any specific period of time. *See* SCPA 304(1).

the Will;

6. An itemized list of the decedent's personal property and the value of each item; and
7. A list of the decedent's liabilities, including the name of each creditor and the amount owed by the decedent.

See Official Form SE-2A (Affidavit in Relation to Settlement of Estate Under Article 13, SCPA).

The affidavit also requires that the applicant affirm and/or acknowledge the following:

1. The applicant has searched the records of the court for prior applications;
2. The value of the decedent's personal property does not exceed $30,000;
3. The applicant agrees to administer the decedent's estate pursuant to SCPA Article 13;
4. The applicant understands that a voluntary administration proceeding does not determine the estate tax liability; and
5. The applicant's powers as voluntary administrator will cease if letters testamentary or of administration are later granted.

PRACTICE RESOURCES:

- *New York Practice Guide: Probate and Estate Administration* § 2.04.
- *Bender's Forms for the Civil Practice* Form No. SCPA 106:45A (Official Form SE-2A, Affidavit in Relation to Settlement of Estate Under Article 13, SCPA (Decedents Dying on or after 8/29/96)).

[4] Filing Supplemental Materials

In addition to the affidavit, the applicant must file:

1. A certified copy of the decedent's death certificate. *See* SCPA 1304(3); 22 NYCRR § 207.15.
2. A renunciation, using Official Form SE-1C (Renunciation of Voluntary Administration), for each person with a prior right to act as voluntary administrator who has renounced right to so act. *See* SCPA 1303.
3. A copy of the death certificate or the date of death for each deceased distributee. *See* 22 NYCRR § 207.16(c)

4. If the decedent left a Will, the original Will, which must be valid on its face. *See* SCPA 1307(1) and Official Form SE-2A (Affidavit in Relation to Settlement of Estate Under Article 13, SCPA), Question 4.

PRACTICE RESOURCES:

- *New York Practice Guide: Probate and Estate Administration* § 2.04.
- *Bender's Forms for the Civil Practice* Form No. SCPA 106:45A (Official Form SE-2A, Affidavit in Relation to Settlement of Estate Under Article 13, SCPA (Decedents Dying on or after 8/29/96)).

Strategic Point: Article 13 does not allow for the filing of a lost Will. The provisions of Article 13 are intended to be used only in uncomplicated situations. Formal probate proceedings under Article 14 will be required to admit a lost Will. *See Matter of Link*, 146 Misc. 2d 319, 550 N.Y.S.2d 568 (Sur. Ct. Rensselaer County 1990).

If the decedent was survived by no distributees or only one distributee or if the distributees are grandparents, aunts, uncles, first cousins, or first cousins once removed of the decedent, the court may require an Affidavit of Heirship and Family Tree pursuant to 22 NYCRR § 207.16(c).

[5] Filing Qualifying Affidavit

The clerk of the court files the affidavit, assigns a number to the matter, enters the matter in the records of the court, and mails a letter or postcard to each distributee, who has not renounced the right to act, and to each beneficiary under the Will listed in the affidavit notifying him or her of the proceeding. *See* SCPA 1304(4).

The notice of appointment sent to each distributee and each beneficiary does not confer jurisdiction over such persons. Thus, the notice does not bar such persons from raising objections to the appointment of a voluntary administrator or to the distribution of the decedent's assets or from contesting the validity of the decedent's Will. *See* SCPA 1304(4).

[6] Obtaining Evidence of Appointment

The voluntary administrator is issued a short certificate of the court evidencing his or her authority to act. *See* SCPA 1304(5). The voluntary administrator's authority may be limited to a specific transfer or transaction and any such limitation will be indicated on the certificate. *See* SCPA

1304(5). Once the certificate issues, the voluntary administrator may then marshal the decedent's personal property or direct that the decedent's property be transferred directly to the person who is entitled to receive the property. The voluntary administrator does this by delivering a certificate to each party in possession or control of the decedent's personal property. *See* SCPA 1304(5).

The short certificate is issued for the items of personal property that are listed in the affidavit. A short certificate must be delivered by the voluntary administrator to each party in possession of any personal property of the decedent. If additional assets are later discovered, in order to collect and administer such assets, the voluntary administrator must file Official Form SE-2B (Amended Affidavit in Relation to Settlement of Estate Under Article 13, SCPA) listing the additional assets and requesting that additional certificates of voluntary administration be issued for such assets, provided, however, that such additional assets do not exceed $30,000. *See* Official Form SE-2B (Amended Affidavit in Relation to Settlement of Estate Under Article 13, SCPA).

PRACTICE RESOURCES:

- *New York Practice Guide: Probate and Estate Administration* § 2.04.
- *Bender's Forms for the Civil Practice* Form No. SCPA 106:46A (Official Form SE-2B, Amended Affidavit in Relation to Settlement of Estate Under Article 13, SCPA (Decedents Dying on or After 8/29/96)).

[7] Recognizing Small Estate Administration of Other Jurisdictions

New York will give full force and effect to a certified copy of an affidavit or a short certificate of a judge or clerk of a probate court made under a small estate administration statute of another of the fifty states, the District of Columbia, Puerto Rico, or a territory or possession of the United States. Such recognition, however, applies only if such other jurisdiction in turn recognizes the authority of a voluntary administrator appointed by a New York Surrogate's Court over the estate of a New York domiciliary decedent. *See* SCPA 1309(2).

[8] Avoiding Need for Bond or Receiving Compensation

The voluntary administrator does not need to give a bond. *See* SCPA 1304(2).

The voluntary administrator must serve without compensation. *See* SCPA 1307(1).

PRACTICE RESOURCES:

- *Warren's Heaton on Surrogate's Court Practice* §§ 37.06, 37.08–37.16, 37.20, 37.21.
- *Cox, Arenson & Medina, New York Civil Practice: SCPA* ¶¶ 1304.01, 1304.02, 1304.03, 1304.04, 1304.05, 1307.03, 1309.02.
- *New York Practice Guide: Probate and Estate Administration* § 2.04.
- *Bender's Forms for the Civil Practice* Form No. SCPA 1303:1, Form No. SCPA 1304:1A.
- *See* Voluntary Administration Checklist (V-CHKLST), *Surrogate's Court Checklists*, at www.courts.state.ny.us/forms.surrogates/pdfs/fouth_checklists.pdf.

PART C: ADMINISTERING SMALL ESTATE

§ 5.06 Checklist for Administering Small Estate

- ☐ Exercise powers of voluntary administrator, which are same as those of administrator under SCPA Art. 10. SCPA 1307. *See* § 5.07[2] *below.*
- ☐ Collect estate assets by delivering short certificate to each party in possession of asset. *See* § 5.05[6] *above.*
- ☐ File "Report and Account in Settlement of Estate" (Official Form SE-1D).
- ☐ Collect all assets, pay expenses and debts, and complete distributions. *See* § 5.07[1] *below.*

§ 5.07 Fulfilling Powers and Duties of Voluntary Administrator

[1] Fulfilling Duties of Voluntary Administrator

A voluntary administrator must do the following:

1. Open a bank account in New York State and deposit all funds received into the account;
2. Sign all checks in the name of the estate as voluntary administrator;
3. Pay the decedent's funeral expenses and debts and necessary administration expenses in the following order of priority established by SCPA 1811:
   a. Reasonable funeral and administration expenses;
   b. Federal claims;
   c. State claims;
   d. Property taxes;
   e. Debts reduced to judgment; and
   f. All other claims;
4. Collect and distribute the balance of the decedent's assets in accordance with the decedent's Will or to the decedent's intestate distributees; and
5. File with the clerk of the court Official Form SE-1D (Report and Account in Settlement of Estate Pursuant to Article 13, SCPA), which is a statement of all assets collected and all payments and distributions made by the voluntary administrator, along with evidence of such payments and distributions.

See SCPA 1307(1) and (2).

In addition, a voluntary administrator has all of the duties with respect to the decedent's personal property that are imposed upon an administrator appointed under Article 10 of the SCPA. *See* SCPA 1306(3).

PRACTICE RESOURCES:

- *New York Practice Guide: Probate and Estate Administration* § 2.07.
- *Bender's Forms for the Civil Practice* Form No. SCPA 106:48 (Official Form SE-1D, Report and Account in Settlement of Estate Pursuant to Article 13, SCPA).

[2] Exercising Powers of Voluntary Administrator

A voluntary administrator has all rights and powers with respect to the decedent's personal property that are granted to an administrator appointed under Article 10 of the SCPA. *See* SCPA 1306(3). These powers include:

1. Power to maintain an action to recover or compel delivery of the decedent's property or to enforce a contractual claim owned by the decedent. *See* SCPA 1306(1).
2. Power to sell assets of the decedent. *See* SCPA 1306(2).
3. Power to collect and discharge a mortgage and to assign a mortgage to a third party. *See Matter of Scheuer*, 187 Misc. 2d 941, 725 N.Y.S.2d 188 (Sur. Ct. Greene County 2001) (holding that a voluntary administrator may assign a mortgage to a third party). *See also* RPL § 321(5).

Exception: Although a voluntary administrator is given the power to sell the decedent's personal property, if the decedent left a Will that specifically bequeaths an item of personal property, the voluntary administrator is bound by the terms of the Will to distribute the item to the named beneficiary. *See* EPTL 11.1-1[b][5].

A voluntary administrator cannot enforce a claim for wrongful death or for personal injuries to the decedent. *See* SCPA 1306(3).

[3] Terminating Powers of Voluntary Administrator

The powers of the voluntary administrator cease immediately upon the appointment and qualification of another fiduciary of the estate. If, however, the authority of another fiduciary is limited pursuant to SCPA 702(9) to the

commencement of an action against the voluntary administrator, the voluntary administrator may continue to act. *See* SCPA 1306(3). *See also Matter of Bassin*, N.Y.L.J., Nov. 24, 1998, at 31 (Sur. Ct. Nassau County). *See* Ch. 4 *above*.

PRACTICE RESOURCES:

- *Warren's Heaton on Surrogate's Court Practice* §§ 37.18, 37.19.
- *Cox, Arenson & Medina, New York Civil Practice: SCPA* ¶¶ 1306.01, 1306.02, 1306.03, 1306.04, 1307.01, 1307.02, 1307.03, 1307.04, 1307.05.
- *New York Practice Guide: Probate and Estate Administration* § 2.06.
- *Bender's Forms for the Civil Practice* Form No. SCPA 1307:1.

§ 5.08 Assessing Effect of Summary Procedures

The voluntary administrator is accountable to all parties interested in the decedent's estate and must exercise the same level of care and is subject to the same fiduciary duties as any other fiduciary. *See* SCPA 1308(1).

The filing of a false affidavit by a voluntary administrator or any other party will subject such person to prosecution for perjury. *See* SCPA 1308(2).

The person in possession of the decedent's personal property is discharged from liability upon transferring such assets to the voluntary administrator in accordance with the short certificate and after receiving a receipt of the voluntary administrator and any document evidencing the decedent's ownership of the asset. *See* SCPA 1305 and 1309(3).

PRACTICE RESOURCES:

- *Warren's Heaton on Surrogate's Court Practice* §§ 37.16, 37.17, 37.20, 37.21.
- *Cox, Arenson & Medina, New York Civil Practice: SCPA* ¶¶ 1305.01, 1305.02, 1308.01.
- *New York Practice Guide: Probate and Estate Administration* § 2.08.

PART D: RECEIVING FUNDS FROM DECEDENT'S DEBTORS WITHOUT ADMINISTRATION

§ 5.09 Checklist for Receiving Funds from Decedent's Debtors Without Administration

☐ Consider right of certain institutional debtors of decedent to pay debt without administration, as follows: SCPA 1310. *See* § 5.10 *below*.

- ○ Immediately, aggregate of $30,000 to decedent's spouse;
- ○ Thirty days after date of death, aggregate of $15,000 to surviving spouse, children, parents, siblings or nieces and nephews; and
- ○ Six months after date of death, aggregate of $5,000 to decedent's distributees or creditors.

☐ Provide debtor with affidavit that affirms death of decedent and that payment meets requirement for payment without administration. SCPA 1310(5). *See* § 5.10[3], [4], [5].

§ 5.10 Paying Claims and Delivering Assets Without Administration

[1] Satisfying the Requirements for Paying Assets Without Administration

There are limited circumstances under which the assets or claims of a decedent may be paid or delivered without any administration, including without the appointment of a voluntary administrator. Requirements for payment or delivery of the decedent's assets without administration are as follows:

1. In all cases other than payment to a surviving spouse under SCPA 1310(2), no fiduciary (whether an executor, administrator or voluntary administrator) has qualified or has been appointed. *See* SCPA 1310(3) and (4).
2. The aggregate value of the payments or assets delivered do not exceed certain statutory limits. *See* SCPA 1310.
3. The payment of the asset or property must not be subject to the decedent's written beneficiary designation or to statutory disposition. *See* SCPA 1310(2), (3), and (4).

The assets and property available for payment or delivery without administration, referred to in SCPA 1310 as "debts," are money or property belonging to or payable to the decedent or the estate including:

1. Funds or securities deposited with a bank, a broker-dealer or

5-17

investment manager or payable out of a trust;

2. Savings and loan shares;
3. Insurance proceeds;
4. Pension, retirement, death and employee profit-sharing benefits and wages;
5. Dividends;
6. Personal property deposited with a county treasurer, coroner or hospital; and
7. Money held on account for a decedent with a medical institution or other facility for the decedent's personal needs.

See SCPA 1310(1) and (8).

[2] Making Payments to Surviving Spouse

Immediately upon the death of the decedent, the decedent's surviving spouse may be paid up to an aggregate of $30,000 of the debts owed to the decedent or the estate. *See* SCPA 1310(2). The surviving spouse must affirm by affidavit that the payment or payments meet the requirements for payment without administration. *See* § 5.10[1] *above*.

Strategic Point: By raising the limitation to $30,000, SCPA 1310(2) circumvented the $20,000 limitation that was in place prior to January 1, 2009 on small estate administration if the amounts are payable to the surviving spouse.

---

[3] Making Payments to Close Family Members

After thirty days from the death of the decedent, up to an aggregate of $15,000 of the debts owed to the decedent or the estate may be paid to the decedent's:

1. Surviving spouse;
2. Children;
3. Parents;
4. Siblings; and
5. Nieces and nephews.

See SCPA 1310(3). If more than one person requests payment, preference is given to persons in the order named. Upon the request of any one of such

persons, payment may also be made directly to a creditor of the dece to a person who has paid the decedent's funeral expenses. *See* 1310(3).

The surviving spouse or relative to whom or at whose request a payme is made must affirm by affidavit that the decedent is dead, his or her relationship to the decedent, the names and addresses of the persons receiving the money and that the payments meet the requirements for payment without administration. *See* § 5.10[1] *above*. *See* SCPA 1310(3).

[4] Making Payments to Distributees and Creditors of Decedent

After six months from the death of the decedent, up to an aggregate of $5,000 of the debts owed to the decedent or the estate may be paid by the debtor to the decedent's distributees or, to the extent that the funds are not exempt from creditor claims, to the decedent's creditors or to any person who paid the decedent's funeral expenses. *See* SCPA 1310(4), (8). The party to whom payment is made must affirm by affidavit that:

1. The decedent is dead and was not survived by a spouse or minor child;
2. The party is entitled to the payment; and
3. Payments meet the requirements for payment without administration. *See* § 5.10[1] *above*.

See SCPA 1310(4), (8).

Strategic Point: This procedure is frequently employed to reimburse family members who have advanced funeral expenses.

---

[5] Discharging Debtor

A debtor of the decedent will be completely discharged if the debtor makes payments pursuant to SCPA 1310 in good faith even if the affidavit given to the debtor is false unless:

1. The decedent is alive;
2. The debtor did not wait the required length of time before making payment; or
3. The affiant did not bear the stated relationship to the decedent.

See SCPA 1310(5).

[6] Considering Accountability of Payee

Any person receiving property pursuant to SCPA 1310 is accountable to

the fiduciary, if one is later appointed, or to the public administrator. *See* SCPA 1310(6). A surviving spouse need not account to the extent such property would otherwise be set aside pursuant to EPTL 5-3.1 as part of the surviving spouse's exempt property. *See* SCPA 1310(6).

PRACTICE RESOURCES:

- *Warren's Heaton on Surrogate's Court Practice* § 37.22.
- *Cox, Arenson & Medina, New York Civil Practice: SCPA* ¶¶ 1310.01 et seq.
- *New York Practice Guide: Probate and Estate Administration* § 2.09.

§ 5.11 Paying Court Fees

The following fees will be charged by the court:

1. For filing Form SE-2A (Affidavit in Relation to Settlement of Estate Under Article 13, SCPA)—one dollar. *See* SCPA 1304(4).
2. For obtaining a short certificate—no fee (for decedents dying after July 5, 1999). *See* SCPA 1304(5).
3. For filing Form SE-1D (Report and Account in Settlement of Estate Pursuant to Article 13, SCPA)—no fee. *See* SCPA 1307(2).

PRACTICE RESOURCES:

- *New York Practice Guide: Probate and Estate Administration* §§ 2.11, 2.14.
- *Bender's Forms for the Civil Practice* Form No. SCPA 106:45A (Official Form SE-2A, Affidavit in Relation to Settlement of Estate Under Article 13, SCPA) (Decedents Dying on or after 8/29/96)), Form No. SCPA 106:48 (Official Form SE-1D, Report and Account in Settlement of Estate Pursuant to Article 13, SCPA).