

# Court Policies

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A very hot topic these days is attempting to bring “uniformity of practice” to the probate courts across the state. Just as you see in your daily practice, oftentimes the interpretation of laws and court rules are just that: interpretation. Until we get clear guidance on particular issues, the courts have to review the law and make a determination as to how it shall be applied. The same is true in probate practice. One source of our county’s practices and/or policies can be found on our Oakland County Web site. Our Web site contains very helpful information including frequently asked questions and links to other sites such as those that could provide you with forms and brochures. Finally, if you have a particularly difficult or unique situation, it is always helpful to call the court to determine what their particular practice is for your issue.

## REMINDERS

### • **Who can file small estates?**

Public administrators can file small estates if they were the prior fiduciary; funeral directors who are owed money, heirs, or whoever paid the funeral bill can also file small estates. (Hint: Remember to review the statute for definitions of “heirs.”)

### • **Filing Wills in small estates**

Remember that since the courts are not opening an estate nor appointing a fiduciary, if you present a Will with your small estate it will simply be stored for safekeeping and not be “on file” with the small estate documentation.

### • **Pro rata determination in small estates**

If you advise a client to open a small estate and there are not sufficient funds to pay the funeral bill, the money will be assigned by percentage of the amount the parties contributed to the funeral bill (or completely to the person who paid the funeral bill).

### • **Listing versus selling of real estate**

Under the Revised Probate Code parties would, at times, ask permission on an estate or conservatorship to enter into a listing agreement. EPIC does not require you to do this. If a party insists, the court would permit them to file a petition for authority to list the real estate.

Conservators and personal representatives who are formally appointed or have restricted letters, however, will need court authority to complete a specific sale. The court order should list the specifics of the sale including exactly what they are selling, who the buyer is, the amount of the purchase price, etc.

## DID YOU KNOW?

### • **Adoption:**

Pursuant to the law, a full guardian may agree to the adoption of their ward.

### • **Secret marriages:**

Secret marriage documents are handled through the probate courts but in Oakland County are not handled at the probate counter. In order to process a secret marriage, you would need to go to our Mental Health office. Requests to receive copies of documents previously filed can be made either in person or through the mail.

### • **Public Administrators:**

Where there are no heirs for a decedent, a public administrator can petition to open an informal estate. Public administrators have priority under EPIC. The public administrator can be appointed on the spot without any notice. In these cases, the attorney general is an interested party but gets notice after the appointment.

### • **Missing legatees**

Where there is a decedent’s estate with missing heirs or devisees, the personal representative will ultimately need to turn those funds over to the court. (In Oakland County it is the Oakland County Treasurer’s Office.) They do not need a court order to deposit the funds with the treasurer; however, the treasurer may require an order. For a Petition and Order to Turn Over Funds to the Treasurer’s Office, the interested parties consist of the personal representative and “anyone else who is affected by it” (which is basically the missing person or persons!) [MCR 5.125(c)(12)]. These orders are subsequently presented to the treasurer’s office so that you may deposit the funds.

### • **Office of the Great Seal**

There may be times when a fiduciary you are dealing with needs documents handled a specific way if they are being sent out of the country. In dealing with foreign estates you may see wording on documents similar to “The Office of the Great Seal” needs this, etc. If presented to Oakland County, we will attach an attestation document. This attestation will have original signatures of the chief judge and probate register and will have to be authorized.

Stay tuned.