

PRIORITY FOR APPOINTMENT AS PERSONAL REPRESENTATIVE

A Personal Representative of an estate must be at least 18 years old, and not otherwise disqualified to serve.

The person with first priority for appointment as Personal Representative is the person nominated in the Will of the decedent.

When a person dies without a valid Will, the priority for appointment of Personal Representative is determined by heirship.

The person with first priority for appointment is the decedent's surviving spouse.

If there is no spouse, or the spouse declines to serve, the decedent's children have equal priority for appointment (if there is a deceased child who has surviving children, those children also have an equal priority for appointment).

If there are no spouse or children, decedent's surviving parents have equal priority for appointment.

If there are no surviving spouse, children, or parents, then decedent's brothers and sisters have equal priority for appointment (if one or more of decedent's siblings has died, the children of the deceased sibling(s) also have an equal priority for appointment).

A creditor or other interested person may also serve as Personal Representative and has priority for appointment after all of the people listed above. A person who has highest or equal priority to serve may decline to serve and confer his/her relative priority upon another, nominating him/her to serve as Personal Representative. This must be done in writing. If the heirs cannot all agree on who will serve as Personal Representative, the case cannot be filed in the Probate Court. Instead, the appointment must be done in a formal probate proceeding in the District Court.

POPULAR MISCONCEPTIONS

"I'm the oldest child, so I have priority to serve as Personal Representative."

TRUTH: All heirs have equal priority for appointment as Personal Representative.

"I had Power of Attorney, so I have priority to serve as Personal Representative."

TRUTH: A Power of Attorney expires when someone dies and does not give anyone higher priority for appointment.

"I paid all the bills, taxes, etc. on the property, so I'm entitled to inherit the property."

TRUTH: Although this might give you a claim against the estate, it does not give you the right to inherit the property.

"I'm the Personal Representative because I'm named in the Will."

TRUTH: The Will only sets out the decedent's intent that you be appointed Personal Representative. You are not legally the Personal Representative until the Court appoints you.

"So and so was left out of the Will, so they're not entitled to notice."

TRUTH: Heirs not named in the Will are still entitled to notice.

"The other heirs live out-of-state, so they are not entitled to appointment as Personal Representative."

TRUTH: The heirs have equal priority for appointment regardless of where they live.

"Illegitimate children who had no contact with the decedent are not entitled to notice or to inherit from estate."

TRUTH: Illegitimate children are still considered heirs and are entitled to notice and to inherit from the estate.

"So and so wasn't a citizen, so he can't inherit from the estate."

TRUTH: Not being a U.S. citizen doesn't prevent someone from inheriting from an estate.

"He raised me as his own."

TRUTH: Unless you were legally adopted or named in the Will, you are not entitled to inherit from the estate.

"When is the reading of the Will?"

TRUTH: This usually only happens in the movies. Once a Will is probated, the Personal Representative must give notice to the spouse, children, heirs, and devisees.

HELP?

Some procedures may require the services of an attorney. The Court can provide information, and Probate Court forms but not legal services, legal advice or other forms. Additional information on probate is available in our other brochures and at the Probate Court's web site

CONTACT INFO

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