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Winston & Cashatt

L A W Y E R S

A Professional Service Corporation

*Winston & Cashatt has offices in Spokane, Washington
and Coeur d'Alene, Idaho*

DATE

ADDRESS

Re: Estate of _____

Dear _____:

At the hearing on _____, you were appointed Personal Representative of the Estate of _____. To fully advise you of each step in the proceedings, we have enclosed conformed copies of the following legal documents:

1. Petition for Order for Testate Probate Estate;
2. Order Re: Testate Estate;
3. Oath of Personal Representative;
4. Notice of Probate Proceedings;
5. Notice to Creditors.

Additionally, we have also enclosed one **original** Letter Testamentary issued by the Court. Also enclosed are copies of letters sent to the heirs of the Estate, as required by Washington State law.

You may periodically receive legal documents and correspondence which you should keep together. We have outlined some of the matters involved in the probate proceedings below.

As Personal Representative, you are charged with the duty of administering the Estate. You are the only individual authorized by the Court to act as the representative of the Estate. For this reason, you must fulfill certain legal duties. In order to assist you in performing your duties and to give you a rough timetable for completion of the probate, I have outlined some of the more important details of the probate process below. There may be some areas not addressed in this letter. If you have any additional questions about your responsibilities, please ask me so that I may clarify any items you do not understand.

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YOUR DUTIES AND THE PROBATE PROCESS

1. General Duties of Personal Representative. Your primary duty is to protect the Estate. Your duty is to act in the best interests of the heirs/beneficiaries. You must put the interests of the Estate *before* your personal interests. If you believe you are in a position where you do not know what you should do, or if you have a conflict, please discuss the situation with me. I can give you guidance on what to do as I am representing you in your role as Personal Representative.

It is your responsibility as Personal Representative of the Estate to possess or control all assets belonging to the Estate. At the time when the Estate is closed, an accounting must be made of all assets of the Estate, all income received, and all expenditures made during the course of administration. It is essential that accurate records be maintained of all income and disbursements and that you retain all receipts so that they may be recorded when the Estate is ready to be closed.

To protect the Estate assets, I recommend you review the insurance coverage of assets to determine whether or not there is adequate protection.

2. Notification and payment of creditors. My office has prepared a Probate Notice to Creditors. This Notice is published in the legal notice section of a newspaper in the County of residence or Spokane County, the County where the action was filed, for three consecutive weeks. Publication will begin on _____. This Notice puts creditors on notice they have four months from the first date of publication of the Notice to come forward with any claims against the Estate.

As a general rule, the Personal Representative through counsel should notify any person or organization that may be a creditor of the Decedent. You should review all files and correspondence of the Decedent to determine "reasonably ascertainable" creditors. To take advantage of the four months Creditor's Claim period, actual notice must be sent to "reasonable ascertainable" creditors. If actual notice is not sent to such creditors, they have a two-year period to present claims.

If following your review of the Decedent's files you are aware of anyone who is a creditor of the Estate, please let me know so my office can mail Notice to them. Notice was also mailed to the Washington State Office of Financial Recovery, as required by statute.

Normally, you should *not* pay the bills of the Estate unless a Creditor's Claim has been presented to my office. This includes the hospital, doctors and any other persons or organizations advising you a bill is owed. You should advise them to contact my office. If you, as the Personal Representative, pay the bill without a Creditor's Claim, you may be personally liable. You should, however, continue to pay bills associated with maintaining any real property, such as utilities and insurance. However, due to the nature of the outstanding bills (minor credit card and utility bill), it is okay to go ahead and pay them.

Creditors are required to comply with strict statutory requirements to perfect a claim against the Estate. My office will generally send a letter, along with the Probate Notice to Creditors, thirty days prior to the end of the Creditor's Claim period. If the creditor does not respond in a timely manner with a valid claim, that claim is barred and need not be paid.

However, it is the Personal Representative's decision whether or not to pay a Creditor's Claim, valid or invalid. Sometimes it is simply easier and more efficient to pay a nominal claim, rather than incur the legal expenses associated with the above procedure. However, the concern with payment an invalid Creditor's Claim is a beneficiary of the Estate may claim it should not have been paid and the Personal Representative is personally liable for having paid the invalid claim.

If for some reason you receive a Creditor's Claim, please let me know *immediately*.

Closing of the Estate cannot occur until after the four-month period for giving notice to creditors has expire.

Because the Court granted you nonintervention powers, after the time for allowing creditors to present claims has expired, I will give all the heirs/beneficiaries 30-day notice of the closing of the Estate. If no one objects, then the Estate can be closed.

3. Bank Account. If you have not yet done so, an Estate checking account should be opened at a bank in the name of:

Estate of _____

By _____, Personal Representative

Please provide the financial institution with an **original** of the Letters Testamentary when opening the account. Use the Estate Federal Tax Identification number which is _____ (do not use your Social Security Number). Please also have all bank statements, or copies, sent to our office so that we can maintain our Estate records. We will then forward copies to you for your file. All Estate money which you receive should be deposited to this account and all creditors' claims and expenses of administration should be paid by checks drawn on this account. If the balance in this account becomes greater than that necessary to pay debts and expenses of the Estate, an Estate savings account may be opened. However, in such event, all deposits and withdrawals should still be made through the checking account. Always sign checks (or other documents) by signing your name, followed by Personal Representative of the Estate of _____.

4. Notice of Appointment. The law requires that notice of your appointment and of the pendency of probate proceedings must be mailed to each heir and distributee of the Estate. Accordingly, we have sent such a notice to the following:

See Attached Schedule "A" to the Petition and Order

5. Inventory of Assets. As the Personal Representative, you are required to prepare, within three months after your appointment, an inventory of all assets of the Estate. Approximately one month from now, we will mail to you inventory worksheets to complete and return to us. We will then put the information provided into a formal Inventory and Appraisal of Assets for your review and signature. If, after the Inventory is executed you as Personal Representative, you discover assets which were not included in the original Inventory, we will prepare an Amended Inventory that reflects the additional assets. Not all funds pass through the Estate account. Financial accounts with beneficiary designations pay directly to named beneficiaries. We need these listed for the Inventory.

6. Appraisal of Assets. After the inventory is completed, values must be assigned to each of the items. Bank accounts, savings bonds and listed securities all have a fixed value which you can obtain. We will need the value as of the date of death. We would like your ideas of the fair market values of the home, household furnishings and automobiles, etc. With respect to the household furnishings, except for antiques or other items of special value, they will be valued as a whole and need not be separately listed.

7. Order of Solvency. The probate code in Washington provides for a simplified procedure for the settlement of an estate if the estate is solvent. At the initial court proceeding at which you were appointed Personal Representative, a Petition for Order of Solvency was presented to the court and the Order of Solvency entered. The result of this is that we need not request specific authorization from the court for the various subsequent steps in the administration of the Estate, except for contested issues or to ask the Court for guidance.

8. Real Property. Current tax laws provide for a "step-up in basis" of assets. This is particularly important with respect to highly appreciated assets, such as real property. I recommend that you obtain a Realtor's opinion of value or market analysis as soon as practicable, or an appraisal from a licensed appraiser, but no later than nine months from the date of death. If real property is to be sold within a relatively short period, a separate appraisal would not be necessary, as the sale price will establish the value. Please provide my office a copy of the market evaluation or actual appraisal.

Please be aware, as with all documents you sign, you need to sign all documents related to the sale of real property in your capacity as Personal Representative (and not individually). You should make no representations or warranties about the condition of the property and/or the location of boundary lines. Washington law (RCW 64.06.010) exempts a Personal Representative from completing a Disclosure Statement with regard to the condition of the property. My office should review the Real Estate Purchase and Sale Agreement and all conveyance deeds prior to execution. If you have any questions, please give my office a call. If you do not have a Realtor, I can refer you to one that is familiar with the requirements of probate matters.

9. Paying for Items and Services in Cash. Please try to keep cash payments to a minimum. If you pay any bills in cash, you must keep receipts. If you have advanced any of your own funds to pay Estate bills, you must keep receipts and identify each of them so you may be reimbursed.

10. Compensation for Your Services. You are entitled to compensation for your time and your expenses as Personal Representative of the Estate. You may seek a fee collectable from the Estate for the hours you have worked as Personal Representative. After the passage of four to six months and only after consultation with my office, you may seek payment from the Estate for your services as Personal Representative.

Regardless of whether or not you will seek to be compensated for your services, *you must keep records of your time and your expenses*. I recommend that you keep written records of all activities (such as mileage when you take care of Estate business). This not only establishes your expenses and time, it shows that you have been performing your duties as the Personal Representative. You need to be aware that if you are compensated for your services, this is income to you, and it must be reported to the IRS as taxable income.

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11. Distributions. One of the most frequently asked questions is: “How soon can I begin making distributions of funds and assets?” The answer is it is best to wait until the four months has expired. If the Personal Representative makes any distribution of assets before the four-month period has expired and any creditors come forward with legitimate bills, the Personal Representative may be personally liable (meaning you might have to pay the claim from your own funds and not those of the Estate). For that reason, you should wait for four months after the Notice to Creditors is published before you make any distributions. *Further, you should contact us before any distributions are made.*

12. Income Tax Returns. The Estate is a separate tax-paying entity and a fiduciary income tax return for the Estate must be filed if the income exceeds \$600.00 during a year. Since the Estate is a new taxpayer, an election may be made to file the return on either a calendar year or a fiscal year basis. If a fiscal year is selected, it must end on the last day of a month other than December and the first year may not exceed twelve months. We will discuss this with you further after we have made a forecast of the income of the Estate and estimated the duration of the probate proceedings. Special consideration must also be given to the decedent's individual income tax return for the year 20____ which will be due April 15, 20____. We will discuss this and I can refer you to an accountant if you do not already have one.

13. Attorney Fees. As we discussed at our conference, you have agreed to have us administer the Estate for an hourly fee of \$300, plus costs.

As I previously explained to you, much of the detail in connection with the probate proceedings is handled in our office. We will advise you in advance of each matter which you are required to do, and will prepare all papers and documents necessary for filing in the probate proceedings. If at any time you have any questions, please do not hesitate to write or telephone me.

Very truly yours,

JEFFREY R. ROPP

Enclosures