

Opening Probate in Virginia

If the decedent had a will (testate), the person named in the will as executor must qualify before one of the circuit courts in Virginia. If the executor does not wish to serve, he must formally renounce qualification. If the decedent died without a will (intestate), any heir may qualify as administrator of the estate 30 days after the decedent's death. If there is a sole heir or any heir who has consent from all of the other heirs may qualify within 30 days of the decedent's death.

The executor or administrator (fiduciary) should qualify in the court serving the place where the decedent permanently resided. The location of a nursing home where the decedent last lived is generally not considered as the permanent residence of the decedent, and the decedent is presumed to reside where he last lived prior to entering the nursing home.

The fiduciary who wishes to qualify should call the circuit court for an appointment. Some of the local jurisdictions are

Fairfax County: Probate Division of the Clerk's Office, located in the Fairfax Judicial Center at 4110 Chain Bridge Road, Suite 401, Fairfax, Virginia 22030, can be reached at (703) 246-4153.

Loudoun County: Probate Office, located at 112 Edwards Ferry Road, N.E., Leesburg, VA 20176, can be reached at 703-777-0272.

Arlington County: Probate and Wills, located in the Arlington County Judicial Center, 1425 N. Courthouse Road, Suite 6300, can be reached at 703-228-4376.

Alexandria City: Probate Office in the Alexandria Courthouse, located at 520 King Street, Room 307, Alexandria, VA 22314, can be reached at 703-833-4044.

Prince William County: Probate Office in the Judicial Center, located at 9311 Lee Avenue, Room 314, Manassas, VA 20110, can be reached at 703-792-5587.

The prospective fiduciary should bring to the probate appointment:

- The original will, if any, and any codicils;
- A certified copy of the death certificate;
- An estimate of the value of the decedent's personal assets, and an estimate of the value of any interest in Virginia real estate in the decedent's sole name
- A list of the decedent's heirs at law, including names, ages, addresses and relationship to the decedent. (The heirs at law are not necessarily the beneficiaries of the will; heirs at law are determined by kinship to the deceased and are set by Virginia law);
- Witnesses to the will or depositions of the witnesses, unless the will is self-proving. The Probate clerk can determine if the will is self-proving at the probate appointment, but cannot do so over the phone.
- Checkbook or credit card to pay the probate fees. The probate office generally accepts MasterCard or Visa, with a 4% processing fee.

If the prospective fiduciary is not a resident of Virginia, he should arrange for a Virginia resident to accompany him to the appointment. A nonresident fiduciary must appoint a resident to receive process on his behalf and may wish to have the Virginia resident co-qualify as executor to avoid a requirement for a surety bond, based on the value of the decedent's probate estate.

If all is in order, the clerk will administer the oath of office to the fiduciary, establish the amount of the fiduciary's bond (and whether any surety is required) and will issue certificates of qualification to the fiduciary.