

The Uniform Probate Code – 10 Tips for the Probate Paralegal

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"Generally, the UPC provides for the more expedient and efficient administration of decedents' estates by simplifying the probate process from beginning to end. The goal is to have fewer filing requirements, less court supervision, and a much more passive, hands-off approach by the court system." - Joseph Devlin, Assistant Dean and professor of law at the Massachusetts School of Law at Andover.

The following tips should allow paralegals to easily navigate the UPC in nearly every jurisdiction:

1. The Latin terms "Executor" or "Executrix" are replaced by "Personal Representative" which avoids gender reference.
2. "Issue", which has a biological connotation, is replaced by "descendant" which properly includes adopted children.
3. "Guardian", a broad term that has referred to a person appointed to handle the affairs of person and/or property, now refers to a person appointed to represent an incapacitated person. A "Conservator" is a person appointed to manage the property and business affairs of a protected person. "Ward" is used only to refer to children.
4. In intestate estates, the standard system of representation is per capita at each generation [i.e., all grandchildren (parent has predeceased decedent) receive equal shares.]
5. If no will is found and probated within three years of death, the presumption of "intestacy" is final.
6. Priority among persons seeking appointment as Personal Representative, in either formal or informal estates is:
 - (a) person named in the probated will
 - (b) surviving spouse/devisee
 - (c) other devisee
 - (d) surviving spouse/not a devisee
 - (e) other heirs
7. Duties and powers of the Personal Representative commence at appointment. The fundamental responsibility of the Personal Representative is that of a trustee.
8. Creditor claims must be brought within one year of death. Tulsa notice required. (All creditors must receive notice of the appointment of Personal Representative or the claim may not be discharged by the passing of the one year statutory period).
9. If assets of the estate are insufficient to pay all claims in full, the Personal Representative shall make payments in the following order:
 - (a) costs and expenses of administration
 - (b) reasonable funeral expenses
 - (c) debts and taxes (as per federal law)
 - (d) medical and hospital expenses of last illness
 - (e) debts and taxes (as per state law)
 - (f) debts due to division of medical assistance
 - (g) all other claims.
10. Estates may be closed by the filing of a Petition for Complete Settlement, where the Court enters an order discharging the Personal Representative, or by Sworn Statement of the Personal Representative. Under a Sworn Statement, settlement of the estate cannot be challenged after one year except for fraud or manifest error.

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