

THE JOB OF THE PERSONAL REPRESENTATIVE

Estate of [1], Deceased

You have been nominated or appointed Personal Representative of a Decedent's estate. Now what? This is intended to inform you of your rights, responsibilities, duties and liabilities as Personal Representative. It also explains who else can help you do your job.

1. YOUR TITLE

When you are appointed by the Probate Court, your title will be "[2], Personal Representative of the Estate of [1]."

This is the name you should use on all documents for the Estate. If it is too cumbersome, you can abbreviate your signature as "[2], Personal Representative", and you can abbreviate bank accounts and other items to: "The [1] Estate".

2. YOUR EVIDENCE

When you are appointed, you will be issued Letters Testamentary (if a Will is admitted to Probate) or Letters of Administration (if there is no Will admitted). Your attorney will give you quite a few certified (i.e., with a Court seal) copies of this document for your own use. It is the evidence that you have the power to act as Personal Representative, and you will be giving these copies to those with whom you conduct Estate business. If you need more Letters or updated Letters, ask your attorney.

3. YOUR ATTORNEY

Your attorney is COLIN K. K. GOO. His office and mailing address is Suite 1701, Davies Pacific Center, 841 Bishop Street, Honolulu, Hawaii 96813. The phone number is (808) 533-2400. The facsimile number is (808) 524-5098. The email address is colinkkgoo@aol.com. Normal office hours are 9:00 a.m. to 5:30 p.m. Your attorney's paralegal's name is Catherine Camper, who can help you when your attorney is not available.

Your attorney and his staff have the job of handling the legal aspects of the Probate, while you handle the administrative aspects. Your attorney can also advise you on tax matters and recommended sources of assistance. The attorney was formerly paid an amount set by statute, but is now entitled to a reasonable fee. The former statutory fee schedule may serve as a guide for a reasonable fee in a supervised probate proceeding. In order to avoid later disputes, you may wish to secure the beneficiaries' consent to the fee arrangement with your attorney.

If you ask the attorney to do some of your work for you (such as tracking down assets, preparing the inventory, or preparing your accounting), be prepared to pay the attorney an extra amount for those services from your Personal Representative's fee. (See 5 below.)

4. YOUR ADVISORS

As Personal Representative, you have the authority to hire advisors for the Estate. Your attorney is the most obvious one. In addition, you can retain stock brokers, investment counselors, tax preparers, and other advisors. The cost of hiring these people is a charge against the Estate's assets, as long as the costs are not excessive or wasteful.

You should pick your advisors carefully. Be sure they are qualified in their fields, that they work quickly, that they account to you regularly for their actions, and that they discuss their fees with you in advance. For tax returns, be sure the person you hire knows how to prepare and file estate tax returns. Your advisors can be of great help to you in administering the Estate. However, you are ultimately responsible if anything goes wrong.

5. YOUR COMPENSATION

As Personal Representative, you are entitled to be paid for your services to the estate. The statute entitles you to a reasonable fee which is taxable income to you and subject to Hawaii General Excise Tax. It is recommended that you obtain the beneficiaries' approval of your fee arrangement at the outset in order to avoid disputes later on.

Once again, as with attorneys' compensation, the former statutory fee schedule may serve as a guide for your reasonable fee in a supervised probate. The former statutory fee had two components: a fee on income and a fee on principal. The principal fee was calculated by taking the value of the gross probate estate (before deducting bills, debts, fees, and mortgages) and applying the following table. The gross probate estate value is that amount finally determined for federal estate tax purposes or, if no estate tax return is filed, as shown on the probate inventory.

<u>Gross Probate Estate</u>	<u>Fee</u>
Up to \$15,000	4% of Estate
\$15,000 to \$100,000	\$600.00 plus 3% of Excess over \$15,000
\$100,000 to \$1,000,000	\$3,150 plus 2% of excess over \$100,000
\$1,000,000 to \$3,000,000	\$21,150 plus 1½% of excess over \$1,000,00
Over \$3,000,000	\$51,150 plus 1% of excess over \$3,000,000

The income fee was calculated annually (on the estate's fiscal or calendar year) on the income of the Estate. The fee was equal to 7% of the first \$5,000 earned on the year and 5% of the excess over \$5,000.

The fee is usually paid in increments during the administration. Check with your attorney for his recommendation.

6. YOUR TAXES

As Personal Representative, you are responsible for the following tax returns:

- A. The Decedent's final income tax return(s);
- B. The estate's income tax returns;
- C. The estate's transfer tax returns (i.e., federal and state estate tax returns and federal generation skipping transfer tax return); and
- D. General Excise Tax returns.

You must prepare and file the Decedent's Income Tax Return for the year in which your Decedent died. You must also file a Tax Return for the year prior to death, if the Decedent did not do so. To notify the Internal Revenue Service ("IRS") that you are the Personal Representative of the Estate, you must file IRS Form 56 (available from the IRS). When the Estate is ready to close, you must again file a Form 56 to let the IRS know that you are no longer serving as Personal Representative.

The Estate is its own tax entity. An Employer Identification Number ("EIN") (like a social security number) is required. To obtain one, you may either complete the paper version of IRS Form SS-4 (which is available from the IRS, your attorney, or the Internet) and submit the form by FAX or mail or you may apply for the EIN online at www.irs.gov by way of an interview-style application process (applying online is the preferred method). If you apply for the EIN online, you will receive the EIN immediately upon completion of the online interview. If you apply for the EIN by FAX, you will receive your EIN within about four (4) business days. If you apply for the EIN by mail, you will receive the EIN in about four (4) weeks. The EIN is number that you use for bank and brokerage accounts, tax returns, and the like. For more information about applying for an EIN, go to: <http://www.irs.gov> (follow "Businesses" hyperlink; then follow "Employer ID Numbers" hyperlink; then follow "How to Apply for an EIN" hyperlink).

You must annually file a Form 1041, Fiduciary Income Tax Return. Annually does not necessarily mean on a calendar-year basis. You have some choice in setting your own year for tax purposes. Check with your accountant or attorney for help.

You may have to file a Federal Gift Tax Return (Form 709) if your Decedent made taxable gifts during life and did not report them to the IRS.

There are two primary Estate Tax Returns for you to worry about: A Federal Estate Tax Return (Form 706) and a Hawaii Estate Tax Report (Form M-6). These are due nine (9) months from the date of death. You may or may not have to file Estate Tax Returns, depending upon the size of the Estate. Basically, if the total gross Estate for tax purposes (which is usually bigger than the Probate Estate) is less than the allowable exemption amount for estate and inheritance taxes,

no Returns need be filed¹. Estate taxes are assessed on all property in which the Decedent had an interest, including solely-owned property, jointly-owned property, life insurance, retirement plan proceeds, cars, clothing, jewelry, art, china and furniture. You must establish values and defend them before the IRS, so appraisals are strongly recommended. It is less expensive and time-consuming to obtain an appraisal early than it is to defend your guesstimate value later. In addition, you may be fined for substantially overstating or understating values.

If the Estate has business assets, such as rental property, a General Excise Tax should be assessed and collected and a Return filed with the State. Check with your local Tax Office for forms and licenses.

The preparation and filing of all these Tax Returns that you are responsible for is not an easy task or one to be taken lightly. You should have a competent accountant or tax preparer to help you with the various returns. **YOU ARE PERSONALLY LIABLE** if the returns are not filed or are incorrect. The IRS has an arsenal of penalties and powers to make life uncomfortable for you if something goes wrong. So be careful!!

7. YOUR BOND

A bond is an insurance policy which is a guaranty to the Court that an Estate's assets will be protected. Usually bond is waived, but if it is not waived, you will have to locate a surety and pay a premium which comes out of the Estate assets. The bond must be equal to the value of the Probate assets, plus the estimated income of the Estate for one year. Ask your attorney for help, especially if a creditor or beneficiary mails you a letter demanding that you post a bond.

8. YOUR INVENTORY

One of the first duties you have as a Personal Representative is to locate, identify, secure, and value all of the Probate assets. "Probate Assets" are those assets of which the Decedent was the sole owner or a tenant-in-common. Life insurance policies or retirement plan proceeds which do not have a named beneficiary may also become Probate assets. Joint bank accounts, joint tenancy property, tenant by the entirety property, life insurance with a named beneficiary, and many other assets are non-Probate property, but you must still identify all of it to properly prepare the death tax returns and determine liability for claims.

The Inventory must be prepared within three months after your appointment. It must be mailed to any creditor or beneficiary who requests it and it may be filed with the court. Each asset of the Estate must be properly and fully described, with any encumbrances (mortgages, liens, etc.) noted, and a value assigned. If the estate is large enough that death taxes may be payable, or if there is some question as to the estate's ability to pay creditor claims, it is best that you have a professional appraiser prepare written inventories of real and personal property. A stock broker

¹ The exemption amounts are \$675,000.00 for deaths occurring in 2001; \$1 million for deaths occurring in 2002 and 2003; \$1.5 million for deaths occurring in 2004 and 2005; \$2 million for deaths occurring in 2006, 2007 and 2008; and \$3.5 million for deaths occurring in 2009. There will be no estate tax beginning in 2010 but the repeal of the estate tax is subject to change.

can give you valuations for stocks and bonds. All values reported should be as of the date of death.

When you have prepared the Inventory, give it and all evidence of the valuations to your attorney, who will prepare it in proper form for the court if you choose to file it with the court.

If you are unable to obtain enough information to value an asset, please mention this to your attorney immediately. If you have reason to believe an asset is not worth anything, note that. You can always amend or supplement the Inventory later if the valuations change or new assets are discovered.

Remember: The Inventory lists only Probate assets, not non-Probate assets. You need to locate and value non-probate assets and debts, however, if death taxes may be payable.

9. YOUR POWERS

As Personal Representative, you have control over the Decedent's property just as an individual would have over her or his own property. Your Letters are proof of your power. But there are a few restrictions.

You are a fiduciary. This is a special relationship under the law. You owe a duty to the creditors and beneficiaries of the Estate and to the government to exercise care in what you do. If you do anything illegal that threatens the security of the estate's assets or the interests of the beneficiaries, your attorney must notify the beneficiaries of your illegal conduct. In addition, if you do not perform your job on a timely basis, your attorney may also have to inform the court. Although you can undertake most actions without prior approval, there are special rules relating to real property. If the probated Will authorizes the sale of real property, you may enter into a contract to sell it without first obtaining court approval; if there is no such Will, however, you must obtain the court's permission before you sign a contract to sell real property. Once a contract has been signed, you do not have to obtain a court confirmation of the sale unless the Will requires confirmation or a beneficiary of the estate demands a court confirmation. If a court confirmation is required, prior notice of the hearing must be posted on the courthouse steps at least 15 days prior to the hearing. It is best to consult with your attorney first if you decide to sell real property. It is a good idea to check with the beneficiaries of the estate prior to undertaking any major change in assets.

Your powers are broad: you may buy and sell property, invest assets during administration, abandon anything of little or no value (or that costs more to get to the beneficiaries than it is worth). A common situation is what to do with the clothing, furniture, furnishings, and personal effects of the Decedent. If they are not specifically given away in the Will, and if the residuary beneficiaries don't want them, you may conduct an auction or garage sale (putting the money in the estate) or donate the items to charity (and claim a tax deduction on the estate's income tax return).

Act prudently. Deal with the assets as most business people would deal with their own - conservatively. If in doubt, check with your attorney and beneficiaries.

10. YOUR LIABILITIES

Personal liability means that you have to pay out of your own pocket instead of from the estate assets. This will happen if you do something wrong. The following are areas to which you should give particular attention.

Creditors' Claims: When papers seeking your appointment are filed, you and your attorney may choose to publish a notice in a newspaper to creditors and anyone else who might have an interest in the Estate. Creditors have four months from the date the notice first appears in the newspaper to present you with claims. You must also give written notice to each known creditor, notifying such creditor that it must present its claim within four months from the date of the first publication of the published notice or within sixty days after delivery of the notice, whichever period expires later, or its claim will be barred. If you choose not to publish notice to creditors, they may present their claims anytime within 18 months of the Decedent's death. During this "creditors' claim period", you should review any bills that come in, determine if they are legitimate, and decide if you will pay them. If you question a bill, check with your attorney, because you must follow special procedures. You should check the Decedent's records, mail, and email to see if there are any bills owed by the Decedent. If you find a bill for which no claim has been filed, you must send to the creditor a copy of the letter and claim form.

Once the creditors' claims period expires, any bills which (1) arose prior to the Decedent's death, (2) were not presented during this period, and (3) that you had no reason to know about, are barred and need not be paid. If you feel that a bill should be paid, even though a claim is not submitted or is submitted late, consult with your attorney and the beneficiaries to get approval. If a secured interest claim is filed during the creditors' claims period, you may be liable if you don't take every action possible to safeguard the secured property and make sure payments are made on time.

If you believe a bill is legitimate but you can't pay it right away, you should send an allowance of claim letter to the creditor. If you believe a claim is not legitimate, then send the disallowance of claim letter by certified mail, return receipt requested.

You will be personally liable to the estate's creditors if you give assets away before their claims are satisfied. Therefore, no distribution should be made to beneficiaries prior to the close of the creditors' claims period without being absolutely certain you have enough assets to pay claims.

Tax Liability: You are personally liable for the estate's income and estate taxes for a period of three years after filing in the event an audit results in changes. Your attorney can tell you how to shorten that period to 18 months in some instances. Since you may have to pay for any errors, you must be careful.

11. YOUR BANK ACCOUNTS

You should open bank accounts in the name of the Estate. The name on the accounts should be "[2], Personal Representative of the Estate of [1]". You must open a checking account (so you can pay bills) and you can open a savings account if you feel that there will be more cash

available then needed for bills. The financial institutions will need the Estate's Employer I.D. Number (see Paragraph 6 above) to report interests. If you don't have one, let the financial institution know that you'll give it the number as soon as it is available.

Put all money received into the checking account and make all payments for the Estate from it. The savings account should receive money only from the checking account, and money from the savings account should be transferred only to the checking account. This procedure will ease accounting later on, since all transactions will be reflected in the check register and bank statement.

12. YOUR ACCOUNTING

Another one of your most important and time-consuming duties is to account for every transaction you make for the Estate, without exception. When you are ready to close the Estate, you will have to type up all of these transactions chronologically and present them to the Court and residuary beneficiaries for approval.

To help you in keeping your accounting records, transact all financial business of the Estate through the checking account. This provides a centralized bookkeeping source. Obtain receipts for all payments made and keep all bills paid. Place receipts and bills in a file in order of payment. If you cannot get a receipt, be sure you have the bill and the canceled check. And, of course, keep all your bank statements.

At the end of this description you will find two pages, one marked "Schedule A - Receipts", the other "Schedule B - Disbursements". These sheets should be copied and used as a second register (besides your checkbook) to help prepare accounts later.

Just prior to closing the Estate, you will need to compile the Receipts and Disbursements made up to that time (called by the misnomer "Final Accounts") and give them to your attorney, who will prepare the Petition to close the Estate and handle other procedural matters. After the Final Accounts are approved, you must pay all remaining bills and give the rest of the property in the Estate to the beneficiaries entitled thereto. Then you will prepare a "Supplemental Accounting" and send that to your attorney for filing with the Court. If the Court approves the Supplemental Accounts and your Application for Certificate of Discharge, a Certificate of Discharge will be issued and your job will be done.

13. YOUR DISTRIBUTIONS

Besides paying bills, there are distributions to be made to beneficiaries. The beneficiaries of the Estate are those persons named in a Will or, if there is no Will, those persons designated by law.

If a spouse and/or dependents survive the Decedent, they may be entitled to money or property immediately. This arises from the exercise of rights to "family allowance", "homestead allowance", or "exempt property". If it appears that the Estate is insolvent or that the family needs cash immediately, check with your attorney about these rights.

A surviving spouse has the right to claim one-third of the net Probate Estate if the spouse did not receive at least that share under the Will. Check with your attorney about this because it requires a hearing.

If a Will gives specific gifts to specific persons, those gifts can be given to them anytime after the creditors' claims period expires. Each recipient must sign a receipt for any special bequests which are distributed. Receipt forms may be obtained from your attorney and must be filed with the Court.

Assuming that you have enough in the Estate to pay all bills, you should make distributions of specific gifts as soon as possible. However, check with your attorney before distributing real property, because a Court Order may be required.

Those people entitled to take what's left of the Estate after all else is done (called "residuary beneficiaries") don't get all they are entitled to until after the Final Accounts are approved. That can be quite a long time after death, so you may want to make a partial distribution to the residuary beneficiaries when you know you have enough to meet all needs. You should do several things if you want to make partial distributions: (1) check with your attorney; (2) distribute to all residuary beneficiaries, pro-rata (don't favor one beneficiary); and (3) get a receipt from each beneficiary, which is then filed in the Court.

SCHEDULE A

RECEIPTS

m	Date		Payor and Purpose	Amount
	d	y		

