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### **How to Close Informally Opened Probates**

In general, a probate may be closed by a personal representative anytime after the "claims period" has expired, although the time to close depends on the type of closing being sought, as discussed below.

#### *What is the "Claims Period"?*

Claims against the estate must be presented 1) within 4 months after the date of first publication of notice in the newspaper, 2) within 60 days after mailing or delivery of actual written notice, or 3) within 18 months after decedent's death, if no notice was published or mailed/delivered. After those time periods, creditor claims are barred.

In other words, to close a probate estate, you can either publish notice and wait at least 4 months, or you can not publish notice and wait 18 months from the date of death.

To close the probate estate after the claims period has expired, you have two choices:

#### *"Formal Closing" –*

First, you could close by filing a full formal accounting and a petition to transfer the estate to "formal" proceedings, with notice to all interested parties, wherein the court would schedule a hearing date. Prior to the hearing date, the court would seek to confirm that all notices had been made, creditor notice had been published, inventory had been mailed, and the accounting was in order, amongst other things. Although this is arguably the more labor intensive method, the big advantage is that there would be a final court order adjudicating the will and approving the distribution, which would bar all later claims against you as personal representative, and against the distributees for recovery of distributions, as of 30-days after entry of the court's judgment (the time in which to appeal). You could then be immediately discharged as personal representative and your obligations would end. H.R.S. §560:3-1002, 1007.

Any family settlement agreements or other settlements relating to a probate estate must be submitted for court approval in a formal proceeding.

*“Informal Closing” –*

In the alternative, you can wait until the administration of the estate is fully completed (at least six months have elapsed since your appointment as personal representative, and four or eighteen months have lapsed since publication or not of creditor notice), at which point you can file a sworn statement that the claims period has expired and you have fully administered the decedent’s estate (including payment of administrative expenses and creditors claims, filing of taxes, and distribution of assets). A copy is then mailed to all distributees of the estate, along with an informal accounting of the administration. You must then wait one year, after which time you would be discharged as personal representative and your obligations would end. H.R.S. § 560:3-1003.

The difference from formal closing, in which a Court reviews and approves the administration, as opposed to the informal closing, in which there is no Court review and order, is the length of time in which claims could be brought against you as personal representative and against the distributees. All claims against you as personal representative for breach of fiduciary duty (but not including claims for fraud, misrepresentation, or inadequate disclosure) would expire six months after the filing of the closing statement. H.R.S. § 560:3-1005. All other claims against you as personal representative, and all claims against distributees for recovery, would be barred as of one year from the date of distribution or three years after the date of death, whichever is later. H.R.S. § 560:3-1006.

Regardless of formal or informal closing, claims for fraud may be brought for six years.

*How do I decide?*

Your choice depends upon your risk tolerance and comfort levels with the administration of the estate. The “safest” way is always a formal closing, and so that is what we typically recommend and what most people will choose. For some estates, however, there is really no need for a formal closing, either because the estate is relatively small, the personal representative is the same as the distributee, a great deal of time has passed since the death, there are no known creditors, or the personal representative feels completely comfortable with the administration and the family members, for example.

If you have any questions at all, please discuss them with your attorney. This handout is designed to provide general guidance only.

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