2013 Revisions to Probate Code
Article Three, Sections 1-4
& Related Forms

Lancaster County Probate Court

Hon. Anna S. Miller

104 N. Main St.
P.O. Box 1809 Lancaster, SC 29720

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Per 62-3-104:

- No claim may be filed against the estate of a decedent and no proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative.
- (Secured creditors may still enforce their right to the securities).
  - The Probate Courts will not accept/file claims until a PR is appointed.

Section 62-3-203 has been modified:

- To give 6th priority for appointment to any creditor, forty-five days after the decedent's death, who is complying with 62-3-804(l) (b).
- To clarify that the court may appoint a PR of equal or lower priority within its discretion:
  - Informally, if all of those of equal or higher priority have renounced their right to serve and nominated the applicant, or,
  - Formally, or,
  - Informally in accord with 62-3-310.

62-3-406 clarifies presumptions in contested cases where there are issues regarding the proper execution of the will:

- if the will is witnessed pursuant to Section 62-2-502, but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this State, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.

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Section 62-3-203 has been modified:

-62-3-310.:

"Applicant must give notice of his intention to seek an appointment informally to any person having equal right to appointment not waived in writing and filed with the court. The notice shall state that, if no objection or nomination of another or no competing application or petition for appointment is filed with the court within thirty days from mailing of the application and notice, the applicant may be appointed informally as the personal representative. If an objection, nomination, application, or petition is filed within the thirty day period, the court shall decline the initial application pursuant to Section 62-3-309. The court may require a formal proceeding to appoint someone of equal or lesser priority. "

Per 62-3-204, if an interested person files a demand for notice:

- that demand for notice will expire in one year (and will need to be renewed by the demandant accordingly).
- Failure to notify a party will not affect the validity of an order which is issued or filing which is accepted without compliance with this requirement is not affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and ceases upon the termination of his interest in the estate.

- Section 62-3-301 makes it clear that the court may probate a will without appointing a personal representative.

62-3-406 clarifies presumptions in contested cases where there are issues regarding the proper execution of the will:

- if the will is self-proved pursuant to Section 62-2-503, the will satisfies the requirements for execution, subject to rebuttal, without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it;
- if the will is notarized pursuant to Section 62-2-503(c), but not self-proved, there is a rebuttable presumption that the will satisfies the requirements for execution upon filing the will;

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Forms Associated with Article 3, 1-4

- Fiduciary Letters- #140ES
- Certificate of Appointment- #141ES
- Probate Application- #300ES
- Renunciation of Right to Administration and/or Nomination and/or Waiver of Bond- #302ES
- Application/Petition for Successor Personal Representative- #333ES
- Application/Petition for Appointment of Special Administrator - #332ES
- Application for Subsequent Administration - #334ES
- Application for Settlement & Accounting of Subsequent Administration - #350ES
- Application for Restraint or Performance of Personal Representative- #330ES
- Information to Heirs and Devisees- #305ES