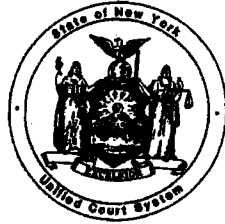


**STATE OF NEW YORK**  
**TIOGA COUNTY SURROGATE'S COURTS**  
**20 COURT STREET, P.O. BOX 10**  
**VILLAGE OF OWEGO, NY, 13827**  
**PHONE: 607 - 689 - 6099**  
**FAX: 646 - 963 - 6398**  
**EMAIL: [TiogaSurrogateCourt@nycourts.gov](mailto:TiogaSurrogateCourt@nycourts.gov)**

**HON. GERALD A. KEENE**  
*Surrogate*



**DEBORAH A. STONE**  
*Chief Clerk of Surrogate's Court*

**INSTRUCTIONS FOR COMPLETING AN ARTICLE 13 AFFIDAVIT - ESTATES HAVING PERSONAL PROPERTY OF THE DECEDENT NOT TO EXCEED \$30,000 (INVOLVING NO REAL PROPERTY). EXEMPT PERSONAL PROPERTY ONLY PERTAINS TO SURVIVING SPOUSE OR CHILDREN - SECTION 5-3.1 EPTL (attached).**

- (A) Name of deceased.
- (B) Name of person wishing to become the Voluntary Administrator (see attached copy of the law that pertains to "persons who may become a Voluntary Administrator).

**Renunciation of Voluntary Administrator Form** - anyone who has a prior to equal right to petition the court to become a voluntary administrator must execute this form and have it notarized.

- (1) Addressed of the proposed Voluntary Administrator.
- (2) Relationship of the proposed Voluntary Administrator to the deceased.
- (3) This section pertains to the deceased. (Name, residence, date of death, place of death and citizenship.
- (4) If he/she died without a Will, check "**Intestate**".  
If he/she died and with a Will, check "**Testate**".
- (5) Please read carefully.
- (6) List next of blood relative. For example, wife and children. If no wife and children, then grandchildren. If no grandchildren, then father and mother. If no father and mother, then brothers and sisters.

A **Family Tree** form must be filed, this shows the family structure. The family tree should show any predeceased next of kin, and their closest living relative. For example, if the deceased is only survived by children and one of which died before the deceased and that pre-deceased child had children, those must be noted on the family tree and the affidavit. The family tree must be completed by a **disinterested party** with a statement of how they are personally familiar with the family history (such as family friend, neighbor, minister, relative that does not hold an interest in this estate).

For all next of kin listed, there must be a complete mailing address for each (including zip code).

- (7) This applies only if the deceased had and Will and if he/she did, then you must list all beneficiaries (persons receiving something under the Will).
- (8) Read carefully.
- (9) This is the section where you list the assets of the decedent for you will need a certificate from the court to take to the person or bank holding the asset.

If **bank accounts**, the court needs the name of the bank, account number and approximate amount in the bank.

If there are **stocks**, the court needs the certificate numbers, company and approximately value of the stock.

If there is a **motor vehicle**, the serial number and the approximate value of the vehicle.

If there are any **guns**, the make, model, caliber or gauge, and serial number are required. Additionally, there is a Firearms Inventory form which is required. The original Firearms Inventory is to be filed with Surrogate's Court and you must send a copy to the Division of Criminal Justice Services as instructed on the form.

Please be as specific as possible.

- (10) List all liabilities of the deceased.
- (11) Read carefully.
- (12) Read carefully.
- (13) Read carefully.

**The Affidavit should be signed before a notary public and the notary should affix his/her stamp to the affidavit.**

**IN ADDITION TO THE ABOVE, THE COURT REQUIRES:**

1. Certified copy of the death certificate
2. Family tree (to be completed by **disinterested party** w/notarized statement of how he/she knows the decedent's family)
3. Copy of funeral bill
4. Original Will (if applicable)
5. Copy of death certificate(s) of distributees (if applicable)

**COURT FILING FEE:           \$1.00**

**ALSO INCLUDE ADDRESSED STAMPED PLAIN ENVELOPES WITH THE ADDRESSES COMPLETED FOR THOSE PERSONS LISTED UNDER NUMBERS 6 AND 7 OF THE AFFIDAVIT.** These are used for the mailing of the Notice to each person listed as required by law.

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It's helpful!  
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(DIY Forms)

2 Your Information

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These computer programs ask you questions. The program then uses your answers to prepare instructions and court forms for your case.

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- ▶ **Safe Deposit Box Petition**
- ▶ **17-A Guardianship Petition**
- ▶ **Small Estate Affidavit**

Check for these and others on [www.nycourthelp.gov](http://www.nycourthelp.gov)



SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

-----X  
VOLUNTARY ADMINISTRATION, Estate of

**AFFIDAVIT IN RELATION TO  
SETTLEMENT OF ESTATE UNDER  
ARTICLE 13, SCPA**

File No. \_\_\_\_\_  
(as of 1/2009)\*

\_\_\_\_\_  
Deceased.  
-----X

STATE OF NEW YORK )  
COUNTY OF \_\_\_\_\_ ) ss.:

(INSTRUCTIONS: In completing this form,  
answer each question. This may be done in some  
instances by crossing out words in parentheses  
and in some instances by inserting the required  
information.)

I, \_\_\_\_\_, being duly sworn, depose and say

(1) My permanent address is: \_\_\_\_\_  
(Street Address) (City/Town/Village)

\_\_\_\_\_  
(County) (State) (Zip) (Telephone Number)

My mailing address is: \_\_\_\_\_  
(If different from permanent address)

(2) My interest is: [ ] Distributee of decedent \_\_\_\_\_  
(Relationship)

[ ] Other (Specify) \_\_\_\_\_

(3) The name, permanent address, date, place of death, and citizenship of the decedent, to whose estate this proceeding relates, are as follows:

Name of Decedent (a/k/a, if applicable): \_\_\_\_\_

Permanent Address: \_\_\_\_\_  
(Street Address) (City/Town/Village) (County) (State)

Date of Death: \_\_\_\_\_ Place of Death: \_\_\_\_\_  
(City/Town/Village) (State)

Citizenship: \_\_\_\_\_

(4) Decedent died: [ ] Intestate (without a will)  
[ ] Testate (the original will is attached)

(5) A search of the records of the Court shows that no application has been made in the estate of the decedent for voluntary administration, letters of administration or for probate of a will, and your affiant is informed and verily believes that no such application ever has been made to any other Surrogate's Court in this state.

**SE-3A \*For use only where decedent died on or after January 1, 2009**

(6) The names and addresses of the decedent's distributees under New York law, including non-marital children and descendants of predeceased non-marital children, and their relationships to the decedent, are as follows: (If more space is needed, add a sheet of paper)

<u>Name</u>	<u>Post Office Address (Including Zip)</u>	<u>Relationship Indicate if non-marital)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

(7) (If decedent had a will) The names and addresses of all beneficiaries in the will of the decedent filed herewith are as follows: (If more space is needed, add a sheet of paper)

<u>Name</u>	<u>Post Office Address (Including Zip)</u>	<u>Bequest</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

8) The value of the entire personal property, wherever located, of the decedent, exclusive of joint bank accounts, trust accounts, U.S. savings bonds POD (payable on death), and jointly owned personal property, or property exempt under the EPTL §5-3.1, **does not exceed \$30,000.00.**

9) The following, exclusive of joint bank accounts, trust accounts, U.S. savings bonds POD (payable on death), and jointly owned personal property, or property exempt under EPTL §5-3.1, is a complete list of all personal property owned by the decedent, either standing in his/her own name or owned by him/her beneficially and including items of value in any safe deposit box. (If more space is needed, add a sheet of paper)

**Items of Personal Property Separately Listed**

**Value of Each Item**

_____	_____
_____	_____
_____	_____

**TOTAL \$ \_\_\_\_\_**

(10) All the **liabilities** of the decedent known to me are as follows: (If more space is needed, add a sheet of paper)

<u>Name of Creditor</u>	<u>Amount Owed</u>
_____	_____
_____	_____
_____	_____

(11) I undertake to act as voluntary administrator/trix of the decedent's estate, and to administer it pursuant to Article 13 of the Surrogate's Court Procedure Act. I agree to reduce all of the decedent's assets to possession; to liquidate such assets to the extent necessary; to open an estate bank account in a bank of deposit or savings bank in this state, in which I shall deposit all money received; to sign all checks drawn on or withdrawals from such account in the name of the estate by myself, as voluntary administrator/trix; to pay the expenses of administration, the decedent's reasonable funeral expenses and his/her debts in the order provided by law; and to distribute the balance to the person or persons and in the amount or amounts provided by law. As voluntary administrator/trix, I shall file in this court an account of all receipts and of disbursements made.

(12) I understand that this proceeding will not determine the estate tax liability, if any, in the event that the decedent had any interest in real property or any joint bank accounts, trust accounts, U.S. savings bonds POD (payable on death), or jointly owned or trust property.

(13) If letters testamentary or of administration are later granted, I acknowledge that my powers as voluntary administrator/trix shall cease, and I shall deliver to the court-appointed fiduciary a complete statement of my account and all assets and funds of the estate in my possession.

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Print Name

Sworn to before me on \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
(Affix Notary Stamp or Seal)

Signature of Attorney: \_\_\_\_\_

Print Name: \_\_\_\_\_

Firm Name: \_\_\_\_\_ Tel. No.: \_\_\_\_\_

Address of Attorney: \_\_\_\_\_

SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

VOLUNTARY ADMINISTRATION, Estate of

RENUNCIATION OF VOLUNTARY  
ADMINISTRATION  
(as of 6/91)

Deceased.

File No. \_\_\_\_\_

TO THE SURROGATE'S COURT:

The undersigned, whose domiciliary address is

\_\_\_\_\_  
(Street Address) (City/Town/Village) (State) (Zip)

Mailing Address \_\_\_\_\_  
(If different from domicile)

being of full age and [check and complete]

[ ] a distributee of the above-named decedent and related as a

\_\_\_\_\_  
(state relationship)

[ ] a fiduciary or legatee named in the decedent's will dated \_\_\_\_\_  
hereby personally appears herein and renounces all right to act as voluntary administrator/rix of the  
goods, chattels and credits of the decedent.

\_\_\_\_\_  
(Renouncing Party)

\_\_\_\_\_  
(Print Name)

STATE OF NEW YORK )  
) ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came  
\_\_\_\_\_, known to me to be the individual described in and who executed the  
foregoing instrument, and to me such person duly acknowledged that he/she executed the same.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Signature of Attorney: \_\_\_\_\_  
Print Name of Attorney: \_\_\_\_\_  
Firm Name: \_\_\_\_\_ Tel. No. \_\_\_\_\_  
Address of Attorney: \_\_\_\_\_

**SURROGATE'S COURT OF THE STATE OF NEW YORK** TIoga **COUNTY**

In The Matter of the Estate of \_\_\_\_\_

**FIREARMS INVENTORY**

(SCPA §2509)

Deceased.

FILE NUMBER \_\_\_\_\_

The undersigned, [ ] a fiduciary, or [ ] an attorney of record certifies that the following firearms, as defined by Section 265.00 of the Penal Law, make up part of the decedent's estate.

Name of Fiduciary or Attorney: \_\_\_\_\_  
 (Address, if changed): \_\_\_\_\_

	Make:	Model:	Caliber or Gauge:	Serial #:	Valuation:
1					\$
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
			<b>TOTAL:</b>		

(mark box if more entries are necessary - and attach extra pages)

ATTORNEY

Certified to be true on \_\_\_\_\_, 20\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Signature

Print Name

\* A copy of this Inventory must also be filed with DCJS at:

*Division of Criminal Justice Services  
 Alfred E. Smith Building  
 80 South Swan Street  
 Albany, NY 12210*

Firearms Inventories filed with the Surrogate's Court will be kept in a secure location separate from the estate file and will be made available for inspection only to persons interested in the proceeding and their counsel, unless otherwise ordered by the Court.



**FAMILY TREE**

Cross Out Class  
That is Not  
Applicable

Children  
*or*  
Brothers/Sisters

Grandchildren  
*or*  
Nieces/Nephews

Great Grandchildren  
*or*  
Grandnieces/Grandnephews

Decedent

Name of Spouse

Deceased

Date

Divorced

Date

Never Married

STATE OF NEW YORK  
COUNTY OF

\_\_\_\_\_ being duly sworn, states that the chart and statement of disinterested party are accurate.  
Sworn to me on \_\_\_\_\_

NOTARY PUBLIC

**STATEMENT OF DISINTERESTED PARTY**

My name is \_\_\_\_\_ and I am a disinterested party of  
this estate. I have known the decedent and his/her family for \_\_\_\_\_  
years as a \_\_\_\_\_  
(i.e., friend, neighbor, relative, minister, etc) and that I have personal  
knowledge of this family.  
Address: \_\_\_\_\_

Grandparents

Aunts and Uncles

First Cousins  
#

\*\*First Cousins Once Removed  
#

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

( ) \_\_\_\_\_  
( ) \_\_\_\_\_  
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( ) \_\_\_\_\_  
( ) \_\_\_\_\_

Paternal Grandfather

\_\_\_\_\_

( ) \_\_\_\_\_  
( ) \_\_\_\_\_  
( ) \_\_\_\_\_

( ) \_\_\_\_\_  
( ) \_\_\_\_\_  
( ) \_\_\_\_\_

Paternal Grandmother

\_\_\_\_\_

Father of Decedent

( ) \_\_\_\_\_  
( ) \_\_\_\_\_  
( ) \_\_\_\_\_

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( ) \_\_\_\_\_  
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( ) \_\_\_\_\_  
( ) \_\_\_\_\_

Maternal Grandfather

\_\_\_\_\_

( ) \_\_\_\_\_  
( ) \_\_\_\_\_  
( ) \_\_\_\_\_

( ) \_\_\_\_\_  
( ) \_\_\_\_\_  
( ) \_\_\_\_\_

Maternal Grandmother

\_\_\_\_\_

Mother of Decedent

( ) \_\_\_\_\_  
( ) \_\_\_\_\_  
( ) \_\_\_\_\_

( ) \_\_\_\_\_  
( ) \_\_\_\_\_  
( ) \_\_\_\_\_

# Chapter 5

## SMALL ESTATE ADMINISTRATION (VOLUNTARY ADMINISTRATION) AND AVOIDING ADMINISTRATION

### SYNOPSIS

#### **PART A: PROCEDURAL CONTEXT**

**§ 5.01** Procedural Context—Small Estate Administration

#### **PART B: OBTAINING LETTERS OF VOLUNTARY ADMINISTRATION**

**§ 5.02** Checklist for Obtaining Letters of Voluntary Administration

**§ 5.03** Qualifying As Small Estate

**§ 5.04** Determining Who May Act As Voluntary Administrator

[1] Determining Who May Act As Voluntary Administrator If Decedent Died Intestate

[2] Determining Who May Act As Voluntary Administrator If Decedent Died Testate

**§ 5.05** Qualifying As Voluntary Administrator

[1] Considering Timing for Qualifying

[2] Commencing Proceeding for Voluntary Administration

[3] Preparing Qualifying Affidavit

[4] Filing Supplemental Materials

[5] Filing Qualifying Affidavit

[6] Obtaining Evidence of Appointment

[7] Recognizing Small Estate Administration of Other Jurisdictions

[8] Avoiding Need for Bond or Receiving Compensation

**PART C: ADMINISTERING SMALL ESTATE**

- § 5.06 Checklist for Administering Small Estate
- § 5.07 Fulfilling Powers and Duties of Voluntary Administrator
  - [1] Fulfilling Duties of Voluntary Administrator
  - [2] Exercising Powers of Voluntary Administrator
  - [3] Terminating Powers of Voluntary Administrator
- § 5.08 Assessing Effect of Summary Procedures

**PART D: RECEIVING FUNDS FROM DECEDENT'S DEBTORS WITHOUT ADMINISTRATION**

- § 5.09 Checklist for Receiving Funds from Decedent's Debtors Without Administration
- § 5.10 Paying Claims and Delivering Assets Without Administration
  - [1] Satisfying the Requirements for Paying Assets Without Administration
  - [2] Making Payments to Surviving Spouse
  - [3] Making Payments to Close Family Members
  - [4] Making Payments to Distributees and Creditors of Decedent
  - [5] Discharging Debtor
  - [6] Considering Accountability of Payee
- § 5.11 Paying Court Fees

**PART A: PROCEDURAL CONTEXT****§ 5.01 Procedural Context—Small Estate Administration**

SCPA Article 13 allows for abbreviated court involvement for the administration of estates consisting of personal property having a de minimis gross value of \$30,000 or less after certain exclusions are made. *See* § 5.03 *below*. The provisions are applicable to the estates of both domiciliary and nondomiciliary decedents. Article 13's provisions are not mandatory and are intended to be remedial, therefore they are given a liberal construction. *See* SCPA 1301(1), 1309(1) and 1312. When deciding whether to utilize the small estate (or "voluntary") administration provisions of Article 13, consideration should be given to the following:

1. Voluntary administration will cost the estate significantly less in administration expenses because no bond must be posted, no commissions are paid and legal fees may be eliminated;
2. Voluntary administration can accelerate significantly the time required to completely administer and settle an estate, because formal court proceedings are dispensed with and assets may be marshaled and distributed with limited time restrictions;
3. Voluntary administration does not formally release the voluntary administrator from liability for actions taken as voluntary administrator, because interested parties may challenge the acts of the voluntary administrator in the future;
4. A voluntary administration proceeding does not determine estate tax liability; and
5. A voluntary administrator cannot enforce a claim for wrongful death or personal injuries to the decedent.

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**Historical Note:** Prior to January 1, 2009, the limitation on small estate administration was \$20,000. *See Matter of Garrick*, 26 Misc. 3d 789, 894 N.Y.S.2d 836 (Sur. Ct. New York County 2009), holding that the increase is retroactive.

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**PART B: OBTAINING LETTERS OF VOLUNTARY  
ADMINISTRATION**

**§ 5.02 Checklist for Obtaining Letters of Voluntary Administration**

- Determine whether estate qualifies as small estate. SCPA 1301. *See* § 5.03 *below*.
- Determine who may act as voluntary administrator. *See* § 5.04 *below*.
  - If decedent died intestate, apply statutory order of priority. SCPA 1303.
  - If decedent died testate, named executor has priority unless he or she renounces.
  - If executor renounces, any adult entitled to petition for letters of administration with Will annexed may act (SCPA 1418).
- Obtain "Renunciation of Voluntary Administration" (Official Form SE-1C) from each person with prior right to act as voluntary administrator who is not seeking appointment. SCPA 1303. *See* § 5.05[4] *below*.
- Prepare and file "Affidavit in Relation to Settlement of Estate" (Official Form SE-2A) *See* § 5.05[2], [3] *below*.
- File supplementary documents with Affidavit, including death certificate, original Will, renunciations, if applicable, death certificates of any deceased distributee. *See* § 5.05[4] *below*.
- Obtain "short certificate" from court for each item of decedent's personal property. SCPA 1304(5). *See* § 5.05[6] *below*.
- If additional items of personal property are found after voluntary administrator is appointed, file "Amended Affidavit in Relation to Settlement of Estate" (Official Form SE-2B) to obtain additional short certificates. *See* § 5.05[6] *below*.

**§ 5.03 Qualifying As Small Estate**

An estate qualifies for voluntary administration if it consists of personal property having a gross value of \$30,000 or less exclusive of the following:

1. Property required to be set off to the decedent's family as exempt property under EPTL 5-3.1(a)(1), (2), (3), (4) and (5) including:
  - a. Housekeeping utensils, musical instruments, furniture, computers, appliances, fuel and clothing worth up to \$20,000;
  - b. Certain family memorabilia, including the family bible,

- family pictures and books, worth up to \$2,500;
- c. Domestic animals and certain farm machinery and equipment, worth up to \$20,000;
  - d. A motor vehicle worth up to \$25,000; and
  - e. Up to \$25,000 in money or marketable securities.
2. Property passing by operation of law, such as:
- a. Joint bank accounts;
  - b. Trust accounts;
  - c. United States savings bonds payable to another;
  - d. Payable on death accounts;
  - e. Jointly owned personal property;
  - f. Life insurance payable to another; and
  - g. Retirement benefits payable to another.

See SCPA 1301(1).

Small estate administration is available only for the decedent's personal property and is not available for the administration of real property. Although the ownership of real property will not prevent use of the provisions to administer the decedent's personal property, formal probate or administration proceedings are still necessary to administer any real property. See SCPA 1302.

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**⚠ Strategic Point:** Although voluntary administration is not mandatory, the courts encourage its use when it is available. See *Matter of Sherwood*, N.Y.L.J., Oct. 23, 1997, at 31 (Sur. Ct. Nassau County) (drastically reducing legal fees because the decision to offer the Will for probate rather than voluntary administering was “fundamentally wrong, wasteful of estate assets and simply not necessary”).

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After factoring in all excluded property, the total value of a decedent's gross estate could far exceed \$30,000 and still permit use of the expedited procedures of small estate administration.

#### **PRACTICE RESOURCES:**

- *Warren's Heaton on Surrogate's Court Practice* §§ 37.01, 37.02, 37.03, 37.04.





























