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**PROPOSED GUIDELINES  
FOR THE  
OPERATIONS OF THE CHIEF  
FISCAL OFFICERS  
OF  
NEW YORK STATE  
APPOINTED  
ADMINISTRATORS  
OF  
ESTATES**

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## **GUIDELINES FOR THE OPERATIONS OF CHIEF FISCAL OFFICERS OF NEW YORK STATE APPOINTED ADMINISTRATORS OF ESTATES**

Pursuant to its authority vested under Sections 1128 and 1219 of the Surrogate's Court Procedure Act ("SCPA"), the Administrative Board for the Offices of the Public Administrators ("Administrative Board") hereby enacts Guidelines for the operations of the Chief Fiscal Officers ("CFOs") appointed administrators of estates. The CFOs are reminded that as estate fiduciaries appointed by the court and as public officers, they are, in the absence of explicit direction in these Guidelines, held to established principles of fiduciary accountability, statutory authority, and/or direction by the court. In discharging the estate administration duties of office, the CFO should at all times strive to avoid taking action that may give rise to a conflict of interest or the appearance of impropriety.

The New York State Legislature's designation of the CFO to perform the Public Administrator function arises out of the need for a disinterested party to serve as the administrator of a decedent's estate where there is no other individual eligible or willing to serve as a private estate fiduciary. The Board emphasizes that CFOs appointed by the Surrogate's Courts to serve as estate fiduciaries are qualified to act in this capacity by virtue of their public office, and that the performance of this service is a function of their public office, pursuant to Section 1219 of the SCPA.

### **I. Record Keeping & Reporting**

A. Each CFO shall maintain a central record containing the name of each estate for which the CFO has been appointed as a fiduciary, the Surrogate's Court file number, the decedent's date of death, the date and type of letters issued, the estimated gross value of each estate, the name of the attorney handling the estate, if any, and the status of each estate.

B. The CFO shall maintain for each estate:

(1) an individual inventory of every item of real and personal property relating to the estate, and the location of such assets, except that like items of individual value of less than \$25 may be described in lots, and

(2) a record of all receipts and disbursements for the estate reflecting the date of receipt and the source of funds received, the date and nature of each disbursement and reference to invoices or other documentation supporting the disbursement, and any other relevant information.

(3) a file ["the estate file"] containing all documents relating to the estate, including but not limited to pleadings, tax returns, correspondence, financial statements, investigator's reports, police vouchers, appraisals, insurance documents,

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receipts, invoices, and proof of payment of estate disbursements. Electronic storage of these documents shall be permissible.

C. Where a CFO has retained counsel on a particular estate, the CFO may, in lieu of keeping custody of the records described in paragraph I (B), above, require counsel to keep custody of such records, unless otherwise directed by the court.

D. The CFO shall promptly file with the Surrogate's Court the monthly statement required under SCPA 1208 (2) of such accounts that have been closed.

E. The CFO shall promptly file with the Surrogate's Court every six months a report of unsettled estates as required under SCPA 1208 (2) and, in addition thereto, if the estate is open for more than 18 months a statement of explanation as to the reason why the estate is unsettled.

## **II. Administrative Functions**

### **A. Conducting Due Diligence**

1. When a CFO is notified of the death of a decedent, the CFO should promptly investigate whether the CFO is eligible to petition for appointment as the estate fiduciary. In conducting this investigation, the CFO shall comply with the Uniform Rules of the Surrogate's Court and all local rules and practices with respect to searching for the decedent's distributees. The CFO should use the annexed Checklist as a guide to the scope and range of their estate fiduciary duties.

2. Unless otherwise directed by the court, the CFO shall search with due diligence for distributees of the decedent prior to or contemporaneous with the filing of a final accounting in each estate under administration in which there are unknown distributees. The CFO may, with court approval, hire an outside searcher under the terms and conditions described in paragraph V(B), below.

### **B. Settlement of Estate Accounts**

The CFO shall judicially settle all accounts whenever the gross assets of the decedent's estate exceed the monetary amount defined for a small estate pursuant to subdivision 1 of SCPA 1301, unless otherwise directed by the court. In those estates where the CFO is acting as Voluntary Administrator, the CFO shall file a report and account within twelve [12] months of the CFO's appointment as a Voluntary Administrator. This section shall not apply where the CFO's letters of administration have been vacated and the estate assets turned over to a successor fiduciary, unless

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otherwise directed by the court.

C. Limited Letters

Where the CFO serves in a limited capacity as a nominal defendant on behalf of an estate (e.g., where the estate is a defendant in a negligence or foreclosure action), the CFO shall upon the completion of limited duties file a statement with the Surrogate's Courts affirming that they have performed the limited duties for which they were appointed and requesting that their letters be revoked.

D. Services on behalf of Estates for which no Commissions are Awarded

Where the CFO performs substantial administrative services on behalf of an estate, for which the CFO is not awarded commissions as a permanent fiduciary, the CFO may assert a claim against the estate in *quantum meruit* for the administrative services rendered, in an amount not exceeding one receiving commission as set forth in Section 2307 of the SCPA.

**III. Cash Management**

A. Estate Accounts

1. Upon receipt by the CFO of any funds from any source for a decedent, the CFO shall open a separate FDIC-insured account at a financial institution in the name of the decedent's estate ["the estate account"]. The account shall be interest-bearing wherever practicable. The deposit of estate funds into "pooled" accounts shall be prohibited, except for the deposit of funds into a sub account, where the CFO maintains at a financial institution a master account for making disbursements, and sub accounts for each estate. All estate funds should be held in accounts or sub accounts titled in the name of the estate. **Attorneys may not hold estate funds in attorney escrow or operating accounts.**

2. The CFO shall without undue delay liquidate accounts held solely in the name of the decedent, and shall deposit all funds received into the estate account or sub account.

3. Interest shall be posted to each estate account or sub account within a reasonable time.

4. Each estate account or sub account shall be reconciled no less than monthly with the balance maintained by the financial institution.

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5. Estate funds held in FDIC insured accounts shall not exceed the amount insured by the FDIC ("FDIC insured amount"). If funds held for an estate in a particular financial institution exceed the FDIC insured amount, the CFO shall immediately: 1) open a separate account or accounts in a different financial institution or financial institutions so that no funds held for an estate in a particular financial institution exceed the FDIC insured amount; or 2) collateralize such sums with approved government securities, pursuant to a written security agreement between the CFO and the financial institution. Funds held in non-FDIC insured accounts must be secured by collateral, as above.

**B. Estate Disbursements**

All disbursements of estate funds shall be approved in writing by the CFO and shall be supported by invoices reflecting the date, nature, and amount of such disbursement, and the estate against which the disbursement is charged. A record of such approval and supporting documentation shall be maintained in the estate file.

**C. Assets Not Passing Through the Estate**

Whenever the CFO receives evidence of joint or trust bank accounts, insurance policies, retirement accounts or other similar assets not passing through the estate, the CFO shall without undue delay notify the institution holding such assets of the death of the decedent, and shall document the date of death value of the asset in the estate file.

**IV. Property Management**

**A. Property Search and Collection**

1. The CFO shall take all steps necessary to inventory and secure all personal property belonging to a decedent's estate. It is the duty of the CFO to supervise and oversee the conduct of those who search and inventory personal property.

2. The CFO or the CFO's representative shall conduct a search of a decedent's residence or safe deposit box as soon as feasible after notice of the decedent's death is received and the CFO determines that such search is necessary to make burial arrangements for the decedent, or to determine whether it may be appropriate for the CFO to petition to serve as the fiduciary of the decedent's estate.

3. During the initial search of decedent's residence, at least two individuals, including the CFO or the CFO's representative, shall be present at all times. The CFO or the CFO's representative shall, contemporaneous with the search of the residence or as soon thereafter as feasible, make an inventory of its contents, and shall

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remove and secure cash and portable valuables.

4. Where the CFO is required to open a safe deposit box maintained by the decedent, at least two individuals, including the CFO or the CFO's representative, shall be present at all times. The CFO or the CFO's representative shall contemporaneous with the search or as soon thereafter as feasible, make a complete and detailed inventory of its contents, and shall secure any contents removed.

**B. Sale of Personal Property**

1. The CFO shall dispose of decedent's tangible personal property as soon as practicable by public sale, which shall include auction or household sale, and shall promptly deposit all funds received into the estate account. The use of third-parties to conduct the auction or household sale of personal property is permissible, and the CFO shall select and compensate such third-parties in the manner prescribed below for the selection and compensation of vendors.

2. Where the CFO reasonably believes that public sale is not in the best interest of the estate, the CFO may dispose of a decedent's tangible personal property by private sale. Where the tangible personal property consists of furnishings or fixtures of less than significant value, or where specific factors make sale by other means impractical, such property may be sold in conjunction with the sale of the real property. Personal property that has no value may be disposed of at the CFO's discretion.

3. The CFO shall maintain in the estate file a record of each item sold, indicating the date sold, the sales price, and, with respect to items sold for more than \$500, the name and address of the purchaser.

4. In no event may the CFO knowingly sell personal property to parties related to the CFO as defined herein. A "party related to the CFO," as used in these Guidelines, shall be (a) any individual related by blood or marriage within the fourth degree to the CFO, or (b) any corporation, firm, association or other entity in which one or more of its officers or directors or any person having a substantial financial interest is related by blood or marriage within the fourth degree to the CFO. Where the CFO employs third-parties to conduct an auction or household sale, the third-party seller shall notify prospective bidders or purchasers that the seller is acting on behalf of the CFO, and of the prohibitions described herein.

**C. Sale of Real Property and Cooperative Apartments**

1. The CFO shall determine fair market value and sell all real property or

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cooperative apartments at public auction or by private sale at the highest and best price available and the CFO shall promptly deposit all funds received into the estate account. Reasonable and customary real estate brokerage fees and other sales expenses may be paid in connection with such sales.

2. In no event may the CFO knowingly sell real property or cooperative apartments to parties related to the CFO as defined in section IV. B (4) of these Guidelines. Where the CFO employs third-parties to sell real property or cooperative apartments, the third-party seller shall notify prospective bidders or purchasers that the seller is acting on behalf of the CFO, and of the prohibitions described herein.

## **V. Compensation and Selection of Legal Counsel & Outside Vendors**

A. As referred to herein, "outside vendors" shall be defined to include, without limitation: real estate appraisers, accountants, private investigators, real estate brokers or agents, appraisers, auctioneers, movers, contractors, insurance brokers, stock and bond brokers, commodities traders, funeral directors, abstract companies, genealogists, heir tracers, warehousemen, managing agents, cleaning services, tradesmen (such as plumbers, electricians, locksmiths, carpenters), and investment advisors.

B. Any retention of a genealogist or kinship investigator to search for distributees shall be conditioned upon written agreement that such genealogist or kinship investigator shall not (a) represent any distributee discovered, (b) accept any compensation from such distributee, nor (c) suggest or recommend to the distributee the services of any attorney or heir tracer, other than to suggest that a distributee might wish to confer with an attorney of the distributee's own choosing.

C. The CFO may not retain as legal counsel or employ as an outside vendor any party related to the CFO as defined in Section IV.B(4) of these Guidelines, nor may the CFO employ as an outside vendor any member of the CFO's staff or the spouse, child, parent or child of a staff member.

D. In selecting legal counsel or outside vendors to provide services, the CFO shall select those who are competitive with others in the classification. In all events, the legal counsel and outside vendors chosen must have the complete confidence of the CFO based upon their prior working relationship or general reputation and standing in the community.

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E. Compensation paid to legal counsel shall be pursuant to a written retainer agreement or letter of engagement, and subject to court review where applicable. Compensation paid to other outside vendors shall be pursuant to a written agreement or invoice. All compensation paid to legal counsel and outside vendors shall be fair and reasonable.

**VI. Effective Date**

These Guidelines shall be effective \_\_\_\_\_.

## CFO CHECKLIST

The time frames listed here are approximate, and the duties listed are not intended to be exclusive. If you have questions, you may wish to check with your Surrogate's Court Clerk for procedural information.

### CFO Duties Prior to Appointment

Upon notification of a death and the necessity to preserve the estate pending appointment of a fiduciary, the CFO should undertake to do the following:

#### 1. Search for a Will

- Check with the Surrogate's Court to determine whether a Will is on file.
- Obtain court order to conduct search of decedent's residence for a Will and/or burial information.
- If decedent maintained a safe deposit box, obtain order to examine the contents pursuant to SCPA 2003 to search for a Will and/or burial information.

#### 2. If a Will is located

- Contact executors, guardians or trustees named in Will.

#### 3. Search for next of kin to arrange burial, as time permits, and/or to handle the estate (due diligence)

- Examine decedent's personal effects, including address books.
- Inquire of decedent's relatives, neighbors, friends, former business associates and employers, the post office and financial institutions.
- Send correspondence to the last known address of any missing distributees.
- Correspond by mail or telephone, or conduct an internet search for persons of the same or similar name in the area where the person being sought lived.
- Examine the records of the motor vehicle bureau and board of elections of the state or county of the last known address of the person whose whereabouts is

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unknown.

**4. If next of kin cannot be located**

- Obtain death certificate.
- Contact veterans organizations.
- Arrange decedent's burial, if necessary.
- Contact local newspaper with obituary information.
- Contact employer and business associates.
- Secure real and personal property.

**CFO Duties After Appointment**

**1. Counsel**

- Retain lawyer and accountant with written retainer agreements or letter of engagement

**2. Obtain information about decedent's financial affairs**

- Open bank accounts for estate.
- Contact post office and file change of address forms.
- Obtain additional death certificates.
- Review all of decedent's records and legal documents.
- Begin inventory of estate assets.
- Contact life insurance agent and report death.
- Contact general insurance agent.
- Contact medical and health insurance companies.
- Contact union regarding pension and death benefits.
- Contact employer regarding pensions and death benefits.
- Contact military regarding pensions and death benefits.

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- Contact Social Security Administration.
- Contact banks, savings and loans, and credit unions.
- Contact mortgage companies.
- Contact IRA or 401(k) account trustees.
- Contact stock broker and investment counselor.
- Contact Department of Motor Vehicles.
- Contact gas, telephone, electric, trash, and water companies.
- Contact newspaper and magazine subscription departments.
- Contact credit card companies.
- Check unclaimed funds for assets in decedent's name.

**3. Marshall Assets**

- Collect all monies and property due to decedent.
- Arrange for appraisal of assets.
- Open decedent's safe deposit box and remove contents to a secure location.
- Arrange for management of business or real estate holdings.
- Arrange for sale of estate assets, if necessary.

**4. Pay bills and debts, including taxes**

- Transfer title of any jointly held accounts to the surviving joint owner.
- Review ownership of Savings Bonds for tax elections.
- Pay all taxes due and file both income tax and estate tax returns.
- Pay all debts and expenses of decedent, including funeral expenses.

**CFO Duties Upon Closing Estate**

- Recheck unclaimed funds before submitting final account.
- Submit final accounting and receipts to Surrogate's court.

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- Distribute all remaining assets, as per decree.
- Recheck unclaimed funds before closing estate.
- Close estate books and affairs and file report pursuant to 22 NYCRR 207.42 with Court.