

Wrongful Death Compromise Settlement Proceeding Checklist

(see Surrogate's Court Form WD-2, rev. 4/98)
(see 22 NYCRR Uniform Rule §207.38)

This Checklist is provided for your convenience while completing the petition and the checklist should not be returned to the Court.

Fill in All Areas On All Pages - Also Mark When Not Applicable When Necessary
Strike Any Paragraphs/Sections Which Do Not Apply
Check All Forms To Make Sure Venue Is Correct - Appropriate County Is Listed

PET	DESCRIPTION	YES	NO
¶ #			
	Does this Surrogate's Court have jurisdiction over the proceeding?		
<i>NOTE: If an action has been commenced in Supreme Court - proof of disposition of the matter must be provided: withdrawal, discontinuance, Supreme Court order transferring action/part of action, etc.</i>			
	Does the caption mirror the estate file name and appointee.		
1.	Is the petitioner a proper party? [see EPTL §5-4.6(a)] Is the petitioner ... the appointed fiduciary a personal representative		
2.	Is the decedent's residence and persons resided with listed?		
3.	Is the date letters of guardianship were issued for any infant children listed? Are the names of the infant children listed as well as the name of the Court where the guardianship issued? Is a copy of the letters of guardianship attached?		
<i>NOTE: A guardian must be appointed for any child receiving funds in excess of \$10,000.[see SCPA §2220(1)]</i>			
4.	Is the date Limited Letters were issued, the decedent's name and mention of bond status listed?		
5.	Is the occupation of the decedent listed? Are the place of employment and address of employment listed? Are the weekly earnings of the decedent listed?		
6.	Are the age of the decedent and date of birth listed?		
7.	Are the date and time of the injuries which caused the decedent's death listed? Is the location of the place of injury listed?		
<i>NOTE: If the cause of action did not arise under New York law, the laws of the jurisdiction under which the cause of action arose must be established to the satisfaction of the Court.</i>			
	Has the fatal incident been described?		
8.	Is the name of the hospital listed?		

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	<p>Is the date, time of death and hospital stay detailed?</p> <p>Are all the proceeds of the action to be allocated to wrongful death?</p> <p>Is there an allocation for “conscious pain and suffering”?</p> <p><i>NOTE: If any of the compromise settlement is to be attributed to “conscious pain and suffering” the court will require a full description of the injury/incident to include but not limited to: police reports, hospital records, affidavits, pleadings, discovery/investigation documents, etc.</i></p>		
9.	<p>Are all defendants, court location, title, and type of any other action commenced listed?</p> <p>Is the name of the insurance company listed?</p> <p>Is the amount of the settlement listed?</p> <p>Is the maximum insurance policy coverage listed?</p>		
10.	Has a complete listing of the assets of the defendant(s) been provided?		
11.	This paragraph states that the settlement being compromised is the largest obtainable amount.		
12.	Are the petitioner’s reasons for acceptance of the settlement listed?		
13.	<p>Are the names of all survivors listed?</p> <p>Are the relationships of all survivors indicated?</p> <p>Are the dates of birth of all survivors listed?</p> <p>Are the present ages of all survivors indicated?</p>		
14.	<p>Is the date the petitioner retained counsel indicated?</p> <p>Is a copy of the retainer agreement attached?</p> <p>Affidavit of services must be attached (unless attorney’s fees were previously approved by another court transferring action).</p> <p>Are the proper amounts listed for: Attorney’s disbursements?</p> <p style="padding-left: 40px;">Attorney’s fees?</p> <p style="padding-left: 40px;">Additional disbursements?</p>		
15.	<p>Are the following statistics indicated?</p> <p style="padding-left: 40px;">Decedent’s age and date of birth</p> <p style="padding-left: 40px;">Decedent’s date of death and life expectancy</p> <p style="padding-left: 40px;">Petitioner’s date of birth and life expectancy</p>		

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15. cont.	<p>All distributee's names, age as of decedent's date of death, anticipated years of dependency and percent of net amount of settlement (Kaiser formula may apply)</p> <p>If a structured settlement, set forth cost of any annuity</p> <p>If parents are sole distributees and distribution is unequal, give reasons</p> <p><i>NOTE: Where recovery or part thereof is allocated to conscious pain and suffering, the proceeds pass through the decedent's estate either in accordance with the provisions of the will, or in the event of intestacy, in accordance with EPTL §4-1.1.</i></p>		
16.	Are all infant distributees listed?		
17.	This paragraph states that petitioner waives statutory commissions and filing of a surety bond.		
18.	<p>Is cost of decedent's funeral bill listed?</p> <p>Is copy of paid bill attached?</p> <p>Are any hospital/medical bills listed as outstanding?</p>		
18a.	Are the facts of any social services claim detailed?		
18b.	Are the facts of any creditor's claims detailed?		
18c.	If a pecuniary loss by a parent is being sought, has that been indicated?		
19.	Is information as to decedent receiving public assistance in form of Aid to Dependent Children provided?		
20.	Has any previous application been made for same type of relief?		
21.	<p>Has the name of the insurance company and the claim holder been listed?</p> <p>Has a request been made by the fiduciary to close the estate?</p>		
22.	<p>Are the names, relationships, and addresses of all interested parties listed?</p> <p><i>NOTE: Interested parties may include but are not limited to - Husband, Wife, Administrator or Administratrix, Executor or Executrix, Daughter, Son, Father, Mother, Alleged Creditor, Department of Social Services, New York State Tax Commission, Insurance Company, Additional Defendants.</i></p> <p>Are all persons under disability and/or infants under the age of fourteen indicated? A complete statement of the nature and extent of the disability other than infancy of distributees must be attached.</p> <p><i>NOTE: A guardian ad litem may be appointed for any person listed in the petition as a person under disability. If the person under disability appears by a guardian of the property, committee, conservator or guaridan of the property pursuant to Article 81 of the Mental Hygiene Law whom the Court finds has no adverse interest, no guardian ad litem is necessary.</i></p>		
23.	Are all persons/agencies required to be cited indicated with name and address?		

PET ¶ #	DESCRIPTION	YES	NO
23. cont.	<p>Under WHEREFORE Clause: has all relief requested been checked and completed?</p> <p>Has any relief not applicable been struck out?</p> <p>Is petition dated, signed, verified, properly notarized (including proper jurat and expiration date of notary's commission)?</p> <p>Is attorney's name, address and phone number listed?</p>		
	<p>Has Part 130 Certification been completed?</p> <p>if <u>NOT</u>, has a separate attorney certification as to Part 130 signing requirements been included?</p>		
If forms are computer generated, has a certification pursuant to Court Rules §207.4 been attached?			

FEE SCHEDULE	SCPA/EPTL § or Rule #														
<p>Has the proper fee been included with the petition?</p> <p>Filing fee is according to the following schedule based upon the gross value of the compromise settlement - see SCPA §2402(6)</p> <table data-bbox="203 1268 730 1528"> <tr> <td>0 but under 10,000</td> <td>\$ 45.00</td> </tr> <tr> <td>10,000 but under 20,000</td> <td>75.00</td> </tr> <tr> <td>20,000 but under 50,000</td> <td>215.00</td> </tr> <tr> <td>50,000 but under 100,000</td> <td>280.00</td> </tr> <tr> <td>100,000 but under 250,000</td> <td>420.00</td> </tr> <tr> <td>250,000 but under 500,000</td> <td>625.00</td> </tr> <tr> <td>500,000 and over</td> <td>1,250.00</td> </tr> </table>	0 but under 10,000	\$ 45.00	10,000 but under 20,000	75.00	20,000 but under 50,000	215.00	50,000 but under 100,000	280.00	100,000 but under 250,000	420.00	250,000 but under 500,000	625.00	500,000 and over	1,250.00	2402
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COMMENTS AND COURT NOTES		Form Number	SCPA/EPTL § or Rule #
When Permitted	Whenever the interests of an estate require the approval of an offer of settlement in a wrongful death proceeding and/or personal injury proceeding.		5-4.6 5-4.1 5-4.3
Forms Always Required	<ul style="list-style-type: none"> •Wrongful Death Petition •Attorney's Affidavit •Waiver and Consent/Citation for Tax Department •Proposed Decree 	WD-2 WD-4 WD-7	
Forms or Documents Sometimes Required	<ul style="list-style-type: none"> •Wrongful Death Citation •Account •Waiver and Consent for Insurance Company •Waiver and Consent for Individual •Copy of Supreme Court Order (in transferred actions) •Affidavit of Service (Personal/Mail/Publication) •Bond •Copy of Kaiser Formula •Tax Discharge of Liability Letter 	WD-1 WD-3 WD-5 WD-6	5-4.4
<p>Make sure all waivers and consents from distributees/beneficiaries are on the official form including all necessary wherefore clauses from petition.</p> <p>Proposed Citation must include all relief requested in petition wherefore clauses.</p> <p>Proofs of Service of Citation must be filed with the Court at least two (2) working days before the return date.</p> <p>Guardian Ad Litem will be appointed for interested parties under a disability. Guardian ad litem will be appointed on or before the return day of process for all unknowns and persons under disability (SCPA §403).</p> <p>Documents signed by Power of Attorney (Provide certified copy of POA and comply with Section 13-2.3 EPTL and 207.48 Uniform Rules).</p> <p>Check to be certain all documents are properly acknowledged.</p>			

THIS MATERIAL IS PROVIDED FOR INFORMATIONAL/TRAINING PURPOSES ONLY. – It is intended for use in conjunction with review of the applicable statutes and rules of the Surrogate's Court and the Surrogate's Court Operations Manual.