

§ 207.16. Petitions for probate and administration; proof of distributions; family tree

(a) All petitions for probate or administration shall:

(1) contain the information required by *SCPA 304*;

(2) contain an estimate of the gross estate of the decedent passing by will or intestacy, separately showing the values of personal and real property, gross rents for a period of 18 months and information about any cause of action for personal injury or wrongful death; and

(3) indicate whether any distributee is a non-marital child or the issue of a non-material person under *EPTL 4-1.2(a)(1)* or (2).

(b) Whenever, in a petition for probate or administration, a party upon whom the service of process is required is a distributee whose relationship to the decedent is derived through another person who is deceased, the petition must either:

(1) show the relationship of the distributee to decedent and the name and relationship of each person through whom such distributee claims to be related to decedent; or

(2) have annexed a family tree, table or diagram showing the name, relationship and date of death of each person through whom such distributee claims to be related to the decedent, which table or diagram shall be supported by an affidavit of a person having knowledge of the contents thereof.

(c) If the petitioner alleges that the decedent was survived by no distributee or only one distributee, or where the relationship of distributees to the decedent is grandparents, aunts, uncles, first cousins or first cousins once removed, proof must be submitted to establish:

(1) how each such distributee is related to the decedent; and

(2) that no other persons of the same or a nearer degree of relationship survived the decedent.

Unless otherwise allowed by the court, the proof submitted pursuant to this subdivision must be by an affidavit or testimony of a disinterested person. Unless otherwise allowed by the court, if only one distributee survived the decedent, proof may not be given by the spouse or children of the distributee. The proof shall include as an exhibit a family tree, table or diagram, except no such table or diagram shall be required if the distributee is the spouse or only child of the decedent.

(d) If the petitioner alleges that any of the distributees of the decedent or others required to be cited are unknown or that the names and addresses of some persons who are or may be distributees are unknown, petitioner must submit an affidavit showing that he or she has used due diligence in endeavoring to ascertain the identity, names and addresses of all such persons. Compliance with this due diligence requirement is not intended to burden the estate with costly or overly time-consuming searches. Absent special circumstances, the affidavit will be deemed to satisfy the requirement of due diligence if it indicates the results obtained from among the following:

(1) examination of decedent's personal effects, including address books;

(2) inquiry of decedent's relatives, neighbors, friends, former business associates and employers, the post office and financial institutions;

(3) correspondence to the last known address of any missing distributees;

(4) correspondence or telephone calls to, or internet search for, persons of same or similar name in the area where the person being sought lived;

(5) examination of 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 unknown.

In probate proceedings, the court may accept, in lieu of the above, an affidavit by decedent setting forth the efforts that he or she made to ascertain relatives.

(e) If a person requesting letters to administer an estate as sole executor or administrator is also an attorney admitted in this State, he or she shall file with the petition requesting letters of statement disclosing:

(1) that the fiduciary is an attorney;

(2) whether the fiduciary or the law firm with which he or she is affiliated will act as counsel; and

(3) if applicable, that the fiduciary was the draftsman of a will offered for probate with respect to that estate.

