

B. Handling Exceptions to Inventory or an Account

An estate cannot be closed until all inventories and accounts are filed with and approved by the Clerk. These filings requirements are divided into four major areas. They are (a) filing a preliminary inventory; (b) filing a 90-day inventory; (c) filing an annual account where necessary; and (d) filing a final account to close the estate.

A prospective executor must submit a preliminary inventory of the assets belonging to the testator values at the time of the testator's death as part of his application for letters. This inventory need not be exact but should be as complete as possible. Values for the preliminary inventory are supplied by the prospective executor based on his good faith opinion.

An executor must thereafter file a 90-day inventory reflecting all property belonging to the testator or his estate as of the time it is made. Non-probate assets should not be listed on the 90-day inventory, but all probate property, both real and personal, belonging to the 90-day inventory is due within 90 days after the executor qualifies for his office. The executor should seek the assistance of professional appraisers in completing his 90-day inventory. The 90-day inventory must be signed by the executor under oath and must contain the names and addresses of any appraisers used to complete the 90-day inventory.

Many Clerks prefer that entireties property be included in the 90-day inventory even though such property is non-probate asset. This is also true of any jointly owned property listed in G.S. § 28A-15-10 if possession is taken by the executor.

If a 90-day inventory is not filed on time, the Clerk will send the executor a notice reminding him of his obligation to file the inventory.

The executor must supplement his 90-day inventory if any changes take place after the inventory filed.

Failure to submit correct and timely inventories may subject the executor to removal from office. The Clerk may have an order to file an inventory served on the executor by the sheriff if an inventory is not filed in a timely manner. The Clerk also has the authority to have the executor arrested and jailed until a proper inventory is filed.

The executor is personally responsible for the costs of these actions. The Clerk may also reduce or eliminate the executor's fee if inventories are not filed on time.

Upon reviewing the annual account, the Clerk may determine that the account or some other portion of the testator's file is deficient in some regard. If this is the case, the Clerk will usually send a notice to the executor requesting that he correct all deficiencies found.

It is good practice to complete the final account and present it to the Clerk for *informal* approval prior to making a complete distribution of the estate. If an error is found in the informal final account, it is much easier to correct the error if the estate has not been distributed.

An account which has been sworn to and audited is prima facie correct, and it places the burden of proof upon the one who alleges to the contrary. N.C.G.S. § 28A-21-1; Braddy v. Pfaff, 210 N.C. 248, 186 S.E. 340 (1936). A final account must set forth: the time period covered by the account; the amount, nature and value of all property on hand or invested by the executor; all income and additional properties that have come into the estate during the period covered by the final account; all payments made on behalf of the estate together with vouchers for all such payments; all losses incurred; and all other information necessary to make a complete and understandable final account.

When the personal representative or collector has paid or otherwise satisfied or provided for all claims against the estate, has properly distributed the remainder of the estate and has filed his final account or settlement, the clerk of superior court shall review the final account; and if he approves it, he shall enter an order discharging the personal representative or collector from further liability. In the absence of a formal order, a discharge of the personal representative does not result from the clerk's approval of the final account. Moreover, the order of discharge can do nothing more than discharge the representative for those matters included in the account. In lieu of having his account examined and settled by the court, the personal representative can negotiate a non-judicial settlement of his account with the interested parties. The settlement would be

binding on the parties in the absence of fraud or mistake, although the agreement to approve the account would not be binding on the probate court.

The clerk may revoke the letters testamentary on his own motion after hearing (or without hearing where the PR cannot be found N.C.G.S. § 28A-9-2) where the PR fails to file an inventory or an annual account. N.C.G.S. § 28A-9-1. On the other hand, any interested person can seek revocation for the PR's misconduct in the execution of his office under the latter section upon verified complaint. The statutory action to remove administrators or executors is not res judicata in any other proceeding the parties pursue. Shelton v. Fairley, 72 N.C. App 1, 323 S.E. 2d 410 (1984), cert. denied, 313 N.C. 509, 329 S.E. 2d 394 (1985).

N.C.G.S. § 28A-21-4 provides that if any personal representative or collector fails to account or renders an unsatisfactory account, the clerk of superior court shall, upon his own motion or upon the request of one or more creditors of the decedent or other interested party, promptly order such personal representative or collector to render a full satisfactory account within 20 days after service of the order. If, after due service of the order, the personal representative or collector does not on or before the return day of the order file such account, or obtain further time in which to file it, the clerk may remove him from office or may issue an attachment against him for contempt and commit him until he files the account. An executor or administrator may be compelled to account by special proceedings or civil action to file a proper accounting by attachment for contempt. Lichtenfels v. North Carolina Nat'l Bank, 260 N.C. 146, 132 S.E.2d 360 (1963).