

Everything You Ever Wanted to Know About Accountings But Were Afraid To Ask

Presented By:

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Accountings in Probate

decembre 1926		Receits		Dépense 1926		299
acc ^t	15	solite en caisse		2756	50	
acc ^t	15	Descriptions de ce jour				
Div	25	142	gambits	426		
arrivés	10 50	112	—	224		
— des biens	70	32	—	48		
—	200	annuages		4 50		
—	16 50	Vendement de l'rétrady		18		
—	12 50	culture		20		
—	9	Subvention de l'Ordre de l'Église 1014				
—	188	membres bienfaiteurs		25		
—	468	Divers		10		
—	212					1779 50
—	1125					<hr/> 4536 00
—	1224	Dépense		1798 75		
—	11 25	Receits		4536		
—	238	déficit		262 75		
—	448					
—	212					
	<hr/> 4798 75					

Why does the Probate Court Require Accountings?

Tenn. Code Ann. § 30-2-601(a)(1) provides: “Within fifteen (15) months from the date of qualification, the personal representative shall make an accounting with the clerk of the court exercising probate jurisdiction in the county of the estate.”

- Exception:
- If accountings have been waived by the decedent's will or other pleadings filed with the court, the personal representative shall not be required to file a detailed accounting but shall be required to file a status report detailing any remaining estate issues within fifteen (15) months from the date of qualification and each year thereafter that the estate remains open. Tenn. Code Ann. § 30-2-601(a)(1).

Ways to have the Requirement of Accountings Waived

- 1. The Testamentary Instrument includes a provision waiving this requirement.
- 2. All of the devisees, legatees, or heirs at law enter into a sworn agreement waiving the requirement of an accounting.
- 3. The Court enters an Order dispensing with the requirement of filing accountings.
- ** Even if the accountings are waived, the Personal Representative must file a status report detailing the issues in the estate. This report is due 15 months from qualification and annually thereafter.
- Tenn. Code Ann. § 30-2-601(a)(1)

Can a Beneficiary of the Estate Request an Accounting, even if Accountings are Waived?

- Yes, Tenn. Code Ann. § 30-2-601(a)(1) provides that: “Upon application of one (1) or more of the distributees of the residue, the court may require the personal representative to file a detailed accounting with the court.”

If Accountings are Required: How Often and What Should be Included

Tenn. Code Ann. § 30-2-601(a)(2)

- The first accounting is due within fifteen (15) months from the date of qualification of the Personal Representative.
- The subsequent accountings are due annually from the date of the first accounting.
- The accountings shall state all receipts, disbursements and distributions of principal and income for the accounting period and the remaining assets held in the estate.

Final Accountings

Tenn. Code Ann. § 30-2-601(a)(2-3)

- The Final Accounting shall Include:
- A) All receipts, disbursements and distributions of principal and income for the complete probate period.
- B) Personal Representative must verify the accounting by oath.
- C) The final accounting shall state the personal representative has mailed or delivered notice of the requirement to file claims required by § 30-2-306(d) to the creditors of the decedent who were known to or reasonably ascertainable by the personal representative.

Notice of Final Accounting and Exception Period

- “No account of any personal representative shall be taken until the clerk of the probate or chancery court, taking the account, or the personal representative or the personal representative's attorney has served the parties interested with notice of taking the account at least five (5) days before the time fixed for taking the account. This notice may be waived in writing by any legatee, distributee or other person interested in the estate.” Tenn. Code Ann. § 30-2-603.
- The statute presumes that the Clerk will hear the accounting and issue findings.
- Tenn. Code Ann. § 30-2-607 provides: “Any person interested in the estate may except to the account within a thirty-day period after it has been stated by the clerk, and, if dissatisfied with the clerk's decision on the exceptions, may within an additional thirty-day period appeal to the court.”

Notice of Final Accounting and Exception Period (Continued)

- Tenn. Code Ann. § 30-2-603(b) provides: “If addresses of heirs, distributees, or other persons interested in the estate are unknown, the personal representative or the personal representative's attorney shall publish notice of the accounting in a newspaper of general circulation in the county with jurisdiction over the probate proceedings.

Examination of the Personal Representative under Oath by the Clerk

Tenn. Code Ann. § 30-2-604.

- “The clerk ... may, and, when it seems to the clerk ... necessary, shall examine the accounting party, upon oath, touching the representative's receipts and disbursements.” *Id.*
- Clerk & Masters are statutorily given authority to hear various matters including “take and state all accounts and settlements, subject to the approval of the chancellor.” Tenn. Code Ann. § 16-16-201(b)(9).
- In the 1999 Court of Appeals case Schoen, 642 S.W.2d at 426-27, the Court stated: “The Master, as a finder of fact, is at liberty to exercise his[her] discretion and best judgment as to what weight or consideration he[she] would accord any evidence offered to him[her].” Nance v. Roberts (In re Estate of Harper), 1999 Tenn. App. LEXIS 136, *6, 1999 WL 99168 (quoting) Schoen, 642 S.W.2d at 426-27.

Sworn Personal Representative Statement

Tenn. Code Ann. § 30-2-601(b)(1)

- If accountings are waived as provided herein, then the necessity of a Final Accounting may be dispensed with if the Personal Representative has filed a Sworn Personal Representative's Statement with the Court.

IN THE CHANCERY COURT FOR HENRY COUNTY, TENNESSEE

ESTATE OF: _____) NO. _____
(Decedent))

STATEMENT IN LIEU OF ACCOUNTING

The undersigned, being the Personal Representative of the Estate herein, pursuant to T.C.A. § 30-2-601(b)(1) and (c), states that the Personal Representative has:

1. Properly administered the Estate of the Decedent;
2. Has paid or settled all claims lawfully presented;
3. Has paid all expenses of administration;
4. Has mailed or delivered notice of the requirement to file claims, as prescribed in § 30-2-306(d), to the creditors of the decedent who were known to me or reasonably ascertainable.
5. Has filed with the Clerk the final receipt and release from the Tennessee Department of Revenue evidencing payment of all Tennessee inheritance and/or estate tax or waiver thereof if required by law;
6. Has filed a release from the Bureau of TennCare if required by law;
7. Has distributed the estate according to the laws of intestate succession or has distributed the estate according to the will and obtained and filed receipts for specific bequests.

SIGNATURE/PERSONAL REPRESENTATIVE

STATE OF _____
COUNTY OF _____

Personally appeared before me, the undersigned, a Notary Public/Clerk & Master in and for said county and state, _____, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who acknowledged that the foregoing was executed for the purpose contained therein.

This ____ day of _____, 20____.

NOTARY PUBLIC/CLERK & MASTER

My Commission Expires: _____

Trouble getting a Distributee to Sign a Receipt/Waiver

Have you ever seen an estate held open just waiting on a distributee to send in a receipt & waiver?

If so, Tenn. Code Ann. § 30-2-601 provides the following answer: “If the personal representative has made diligent efforts, satisfactory to the court, to obtain an acknowledgement from any distributee, and one (1) or more have failed to comply, the personal representative may move the court for closure of the estate by giving notice of the pending settlement to the noncompliant distributee.” Tenn. Code Ann. § 30-2-601(b)(1)(B)(2).

ACCOUNTINGS ON CONSERVATORSHIPS AND GUARDIANSHIPS

Timeline on accountings for a Conservatorship:

- Within thirty (30) days after the six-month anniversary of the fiduciary's date of appointment, the fiduciary shall file a sworn accounting with the court.
- Within sixty (60) days after each anniversary of the “six-month anniversary” accounting or any other end of an accounting period selected by the fiduciary after the six month accounting, but no less than annually.

ACCOUNTINGS ON CONSERVATORSHIPS AND GUARDIANSHIPS (Continued)

Timeline on accountings for a Guardianship:

- Within thirty (30) days after the six-month anniversary of the fiduciary's date of appointment, the fiduciary shall file a sworn accounting with the court.
- Within sixty (60) days after each anniversary of the “six-month anniversary” accounting or any other end of an accounting period selected by the fiduciary after the six month accounting, but no less than annually.
- Preliminary Final Accounting shall not be submitted earlier than ninety (90) days before the Ward’s eighteenth (18th) birthday and no later than sixty (60) days after the Ward’s birthday. Tenn. Code Ann. § 34-2-106(b)(2-4).

What should be included in each accounting

Tenn. Code Ann. § 34-1-111(d)(1)(A-D)

- 1. Each bank statement, brokerage statement or other document reporting any financial information.
- 2. Cancelled checks. If the bank prints copies this is acceptable.
- 3. A copy of any State or Federal Tax Returns for the period.
- 4. If a bond is required, a statement from the corporate surety that the bond is in force for the next annual period.

** The accounting must contain a statement concerning the physical or mental condition of the person with a disability, and the statement must advise the court whether the condition of the respondent continues to require the fiduciary's services, without disclosing medical information required to be kept confidential pursuant to § 34-3-105(f). Tenn. Code Ann. § 34-1-111(d)(2).

** A report regarding the physical or mental condition of the person with a disability may not be waived or excused. Tenn. Code Ann. § 34-1-111(i)(B)(2).

**STATEMENT OF FIDUCIARY AS TO PHYSICAL OR MENTAL CONDITION
OF PERSON WITH DISABILITY**

IN RE: CONSERVATORSHIP OF _____ NO. _____

Comes now, _____, the duly appointed and qualified
Conservator of _____,
and would respectfully show unto the Court the following:

That the ward, _____, continues to need a Conservator due to:

(SPECIFY THE PHYSICAL OR MENTAL CONDITION OF THE PERSON WITH DISABILITY)

The ward is presently residing at the following address: (Please include name of facility if applicable)

This statement is furnished pursuant to T.C.A. §34-1-111(c)(2) to demonstrate to the court the need, or lack of
need, for the continuation of the fiduciary's services.

This ___ day of _____ 20____.

Address:

(Conservator)

If a State or Federally Charter Financial Institution is serving as the fiduciary, are copies of the cancelled checks required?

THE ANSWER IS YES AND NO!

- Tenn. Code Ann. § 45-2-1002(c) provides: “A bank, acting as fiduciary in any capacity for which an annual or periodic court accounting is required, shall not be required to exhibit to the court or the clerk thereof the originals or copies of receipts and cancelled checks for disbursements or distributions made by the fiduciary to support the accounting; provided, that the accounting consists of the bank's computer prepared statements showing all income and principal transactions for the accounting period.”
- “But the court may require that receipts and cancelled checks be exhibited for the final distribution of assets on termination or transfer of the account to a successor.”

What can be done when a fiduciary does not file an Accounting?

Tenn. Code Ann. § 34-1-111(f-h)

- Unless the court has approved an extension of time for filing the accounting, if the fiduciary fails to file the accounting within the required time, the clerk shall promptly notify the fiduciary and the fiduciary's attorney of record. If after notice the accounting has not been filed thirty (30) days thereafter, the clerk shall cite the fiduciary to appear on a date certain and render the accounting.
- Upon failure to appear as cited, the fiduciary shall be summoned to appear before the court and show cause why the fiduciary should not be held in contempt.
- Unless the court has authorized an extension of time to file the accounting, if a fiduciary who has been summoned does not respond within thirty (30) days of the date the summons was received by the fiduciary, the court may enter an order revoking the fiduciary's authority and appointing a substitute fiduciary.

What can be done when a fiduciary does not file an Accounting?

Tenn. Code Ann. § 34-1-111(f-h)

- On the failure of the fiduciary to account, the fiduciary may be charged with the value of the assets at the beginning of the year.
- This amount **shall** accrue interest at the prejudgment rate and compound annually until a proper accounting is made and approved.
- On the issuance of a show cause order and the failure of the fiduciary to appear and explain, the court shall allow the entry of judgment against the fiduciary and the fiduciary's surety for the amount unaccounted for, plus interest.
- The fiduciary's surety shall be given adequate notice and may appear and make defense.

When can Financial Accountings be waived?

Tenn. Code Ann. § 34-1-111(i)(1)(A-B)

- Financial accountings may be excused in the discretion of the court, if the court makes a finding based on the evidence presented at a hearing:
 - 1) That waiver of the accountings would be appropriate
 - 2) That the waiver of accountings would be in the best interest of the minor or person with a disability and
 - 3) That one (1) of the following exists:

When can Financial Accountings be waived?

Tenn. Code Ann. § 34-1-111(i)(1)(A-B)(Continued)

(A) The fiduciary holds no property of the minor or person with a disability and receives only fixed periodic payments, including, but not limited to, social security, veterans benefits or workers' compensation benefits, and the order appointing the fiduciary authorizes the fiduciary to apply the entire periodic payment to the needs of the minor or person with a disability. The fiduciary holds no property of the minor or person with a disability if the property of the minor or person with a disability is:

(i) Deposited with the clerk and master or clerk of the court;

(ii) Placed with a financial institution and the fiduciary and the financial institution enter into a written agreement, filed with the court, in which the financial institution agrees it will not permit the fiduciary to withdraw the principal without court approval; or

(B) The cost of the accounting would exceed twenty-five percent (25%) of the income produced by the property held by the fiduciary.

The Court's Statutory Power to Require Additional Items and Waive Required Items

Tenn. Code Ann. § 34-1-121

- The court has broad discretion to require additional actions not specified in this chapter, and chapters 2 and 3 of this title as the court deems in the best interests of the minor or person with a disability and the property of the minor or the person with a disability. The court also has discretion to waive requirements specified in this chapter, and chapters 2 and 3 of this title if the court finds it is in the best interests of the minor or person with a disability to waive such requirements, particularly in those instances where strict compliance would be too costly or place an undue burden on the fiduciary or the minor or the person with a disability.

QUESTIONS

