

The background features a stylized illustration of a road with white dashed lines curving into the distance. On the left side of the road is a black traffic light with three circular lights: red at the top, yellow in the middle, and green at the bottom. The scene is decorated with large, soft-edged abstract shapes in light blue, light orange, and light pink. 

# **Probate Tips for Small and Simple Estates**

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Milwaukee Justice Center

# Roadmap

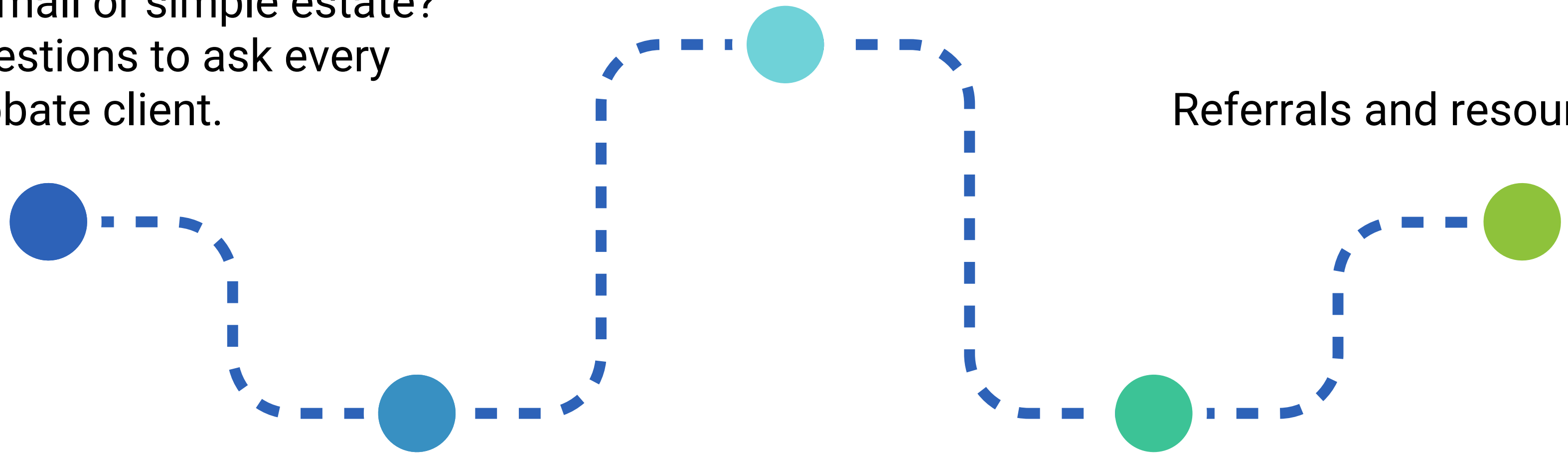
Does my client have  
a small or simple estate?  
Questions to ask every  
probate client.

Small estate transfer tips

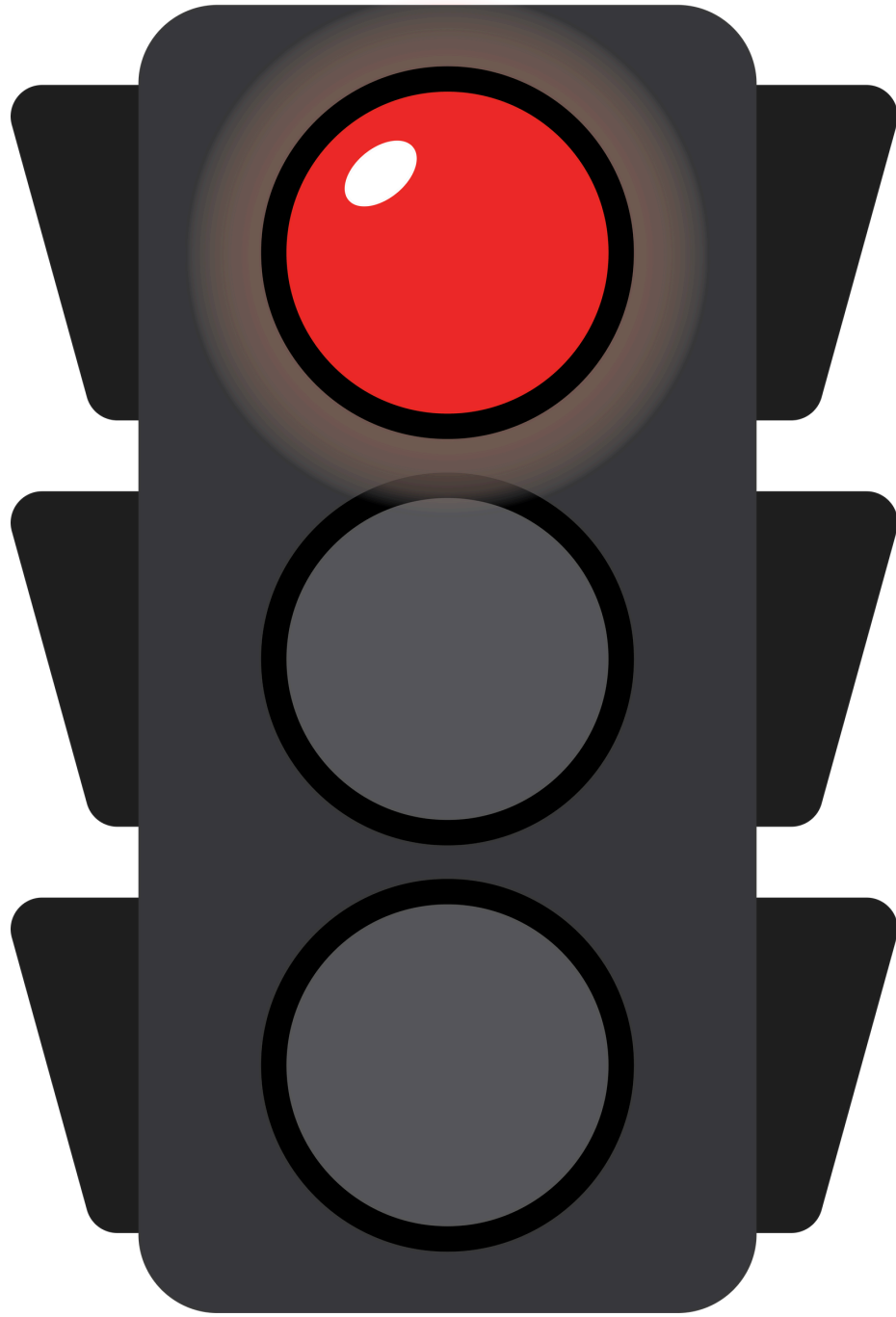
Referrals and resources

Non-probate transfer tips

Informal probate tips

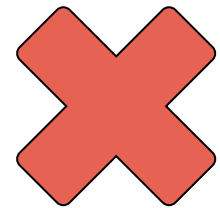
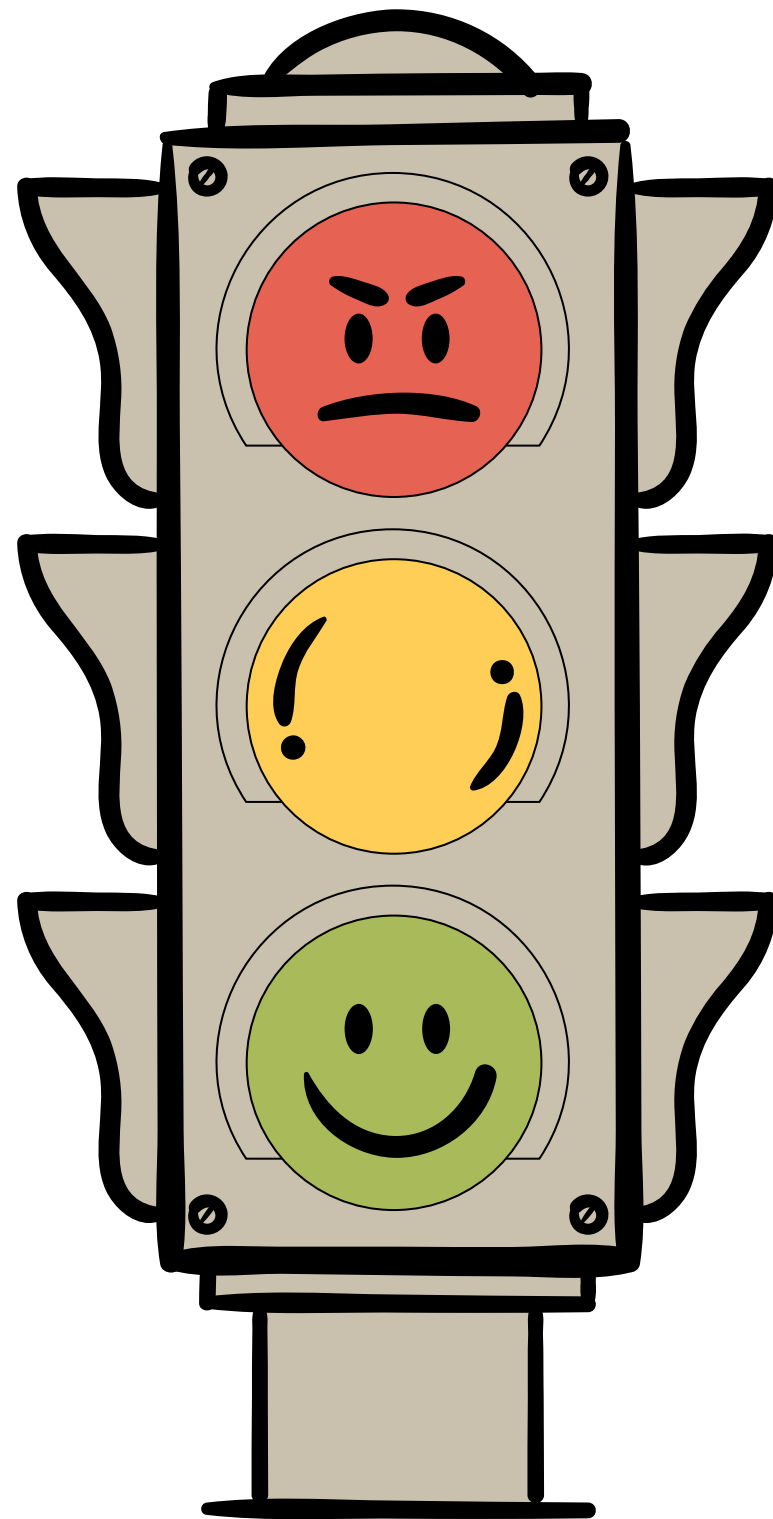


# STOP!



Don't skip these questions! A small estate isn't always simple and a large estate isn't always complex.

# Red light, green light



## STOP

Your client's situation is too complex for brief legal advice from the clinics and/or requires formal probate. Formal probate involves several court hearings and requires an attorney.



## SLOW

Your client's situation requires more info or additional steps. Having an attorney would help.



## GO

Your client's situation is (probably) pretty straightforward and appropriate for a non-probate or small estate procedure, or pro se informal probate



# Was the decedent domiciled in Wisconsin at the time of their death or own property in Wisconsin?

**VOCAB CHECK! Domiciled = where the decedent had their permanent home/residence to which they intended to return after any absence.**



**The decedent was domiciled in Wisconsin and owned property in Wisconsin.**

The client can start their probate case in the county where the decedent lived when they died. If the client is using a non-probate procedure to transfer real estate, file at the Register of Deeds office in the county where the property is located.



**The decedent wasn't domiciled in Wisconsin but owned property here.**

The client can start their probate case in the county where the decedent owned property. If the client is using a non-probate procedure to transfer real estate, file at the Register of Deeds office in the county where the property is located.



**The decedent was or wasn't domiciled in Wisconsin and owned property here and elsewhere.**

Follow one of the rules above based on the decedent's domicile. A different court proceeding may need to happen at the same time in other states where the decedent owned property.



**The decedent wasn't domiciled in Wisconsin or own property here.**

The client should get legal advice in the state where the decedent lived or owned property to determine the right jurisdiction to start a legal process.



# Did the decedent have a will? If so, do you have the original?



## **The decedent didn't have a will.**

The decedent's probate assets will pass to their heirs according to Wis. Stats. Ch. 852.



## **The decedent had a will and the client has access to it.**

The decedent's probate assets will pass according to their will



## **The decedent had a will and the client is still looking for it.**

The client should try to find the original will. Places to check: Everywhere in the decedent's home, law office of any attorney the decedent may have worked with, probate office in any county where the decedent previously lived, safety deposit boxes at the decedent's bank. Accessing a safety deposit box may require the client to complete a petition for special administration (more later). If the client doesn't find the will, they can continue as if the decedent died without a will.



## **The decedent had a will but the client can only find a copy.**

If the client needs to start a probate case, admitting a copy of a will can be challenging because the client would have to prove the original wasn't destroyed and that a sufficient search was conducted for the original. Formal probate is required to try admitting a copy of a will to probate.



# If there is a will, who is named as the personal representative?



**The client is named as the personal representative.**

The client has standing to start informal probate. The client may have standing to start a non-probate procedure.



**The client is not named as the PR, but the named PR and any alternates are unable or unwilling to serve.**

The client has standing to start informal probate if any living and capable PRs are willing sign a declination to serve (PR-1802).



**The client is named as the personal representative but lives out of state.**

The client will need to name an in-state agent who can receive service of court documents related to the case. If there is no such person, the client will need to hire an attorney to serve as the in-state agent.



**The client is not named as the PR, and the named PR won't sign a declination to serve.**

The client will need an attorney for formal probate.





# What is your relationship to the decedent? Who are the other heirs/beneficiaries?

The client's ability to serve as personal representative in a probate proceeding isn't limited by their relationship to the decedent. However, only heirs of the decedent and certain others may complete a Transfer by Affidavit for small estates (more later).

## Determine the interested parties

**If there is a will**, list all named beneficiaries AND all intestate heirs per Wis. Stats. Ch 852.

**If there is no will**, list all intestate heirs per Wis. Stats. Ch. 852.

Generally:

- Surviving spouse + issue of the decedent who are not issue of the current spouse
- If no spouse, then to issue of the decedent
- If no spouse or issue, then to parents of the decedent
- If no spouse, issue, or parents, then to siblings of the decedent, or issue of deceased siblings
- If not spouse, issue, parents, siblings/issue, then to grandparents or issue of grandparents (aunts/uncles)





# Do you know who/where the heirs/beneficiaries are? Any minors?

## Do you expect any conflicts among interested parties?



**There are no unknown or unreachable heirs/beneficiaries. There are no minors. All heirs/beneficiaries will sign waivers consenting to informal administration and appointment of the client as personal representative.**

The client can move forward with informal probate, absent any other red flags. A guardian of the estate or power of attorney for finances may be able to sign waivers for an incompetent or incapacitated person, depending on powers granted.



**There are unknown or unreachable heirs/beneficiaries.**

The client will need to do some work to track down the identities and contact information of all heirs and beneficiaries before starting informal probate or a small estate procedure. The client will need to hire a lawyer for formal probate if they can't get this information.



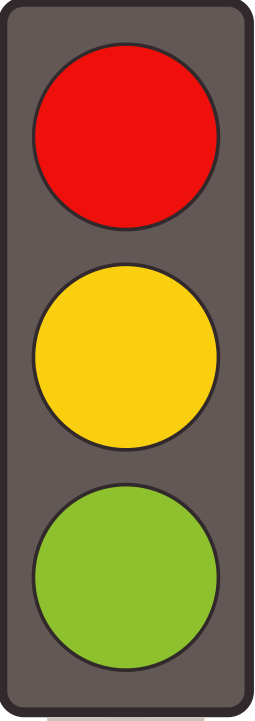
**There are minor heirs/beneficiaries.**

Formal probate is required when there are minor beneficiaries because a minor cannot sign a waiver, nor can their parent. A GAL must be appointed by the court. The client will need to hire a lawyer.



**Some heirs/beneficiaries won't sign waivers consenting to informal administration and appointment of the client as personal representative.**

Formal probate is required if there are any heirs/beneficiaries who won't sign a waiver.



# What property did the decedent own? How is it titled? Do any assets have beneficiary designations? What is the value of the decedent's assets?

- **Jointly owned property** gets transferred without probate. For real estate, the deed must specify joint tenancy for non-married owners; for married owners, both spouses must be on the deed but joint tenancy need not be specified. For other property, like financial accounts, a specific designation of joint ownership isn't required.
- **Property with beneficiary designations** gets transferred without probate.
- **Solely owned property without beneficiary designations** is subject to probate.
- Other property to consider:
  - Machinery
  - Recreational equipment
  - Promissory notes
- **Determine the value of the estate**
  - If gross value is <\$50K, the client likely can use a Transfer by Affidavit for Small Estates
  - Use net value if recommending Summary Settlement or Summary Assignment (more later)



# What are the decedent's debts?



## **The decedent didn't have any known debts.**

The client still has to publish notice to creditors in an approved newspaper as part of the informal probate process. Assuming no claims are filed, the estate can be distributed according to the will or heirs-at-law.



## **The decedent had known debts, and the estate has enough money to pay them.**

The client has to publish notice to creditors in an approved newspaper and settle any claims filed. The client should mail notice of the deadline for filing claims to known creditors. For any claims submitted on-time and paid, the creditor will need to sign an estate receipt (PR-1815) that the client will need to file with the court. The client can avoid the receipt requirement by paying known debts before claims are filed. The client can negotiate debts/claims with creditors. Small estate procedures also require publication and settlement of debts.



## **The decedent had debts that the estate can't pay, or the client doesn't want to sell assets to pay them.**

For deficit estates, the client has to determine the order of claims and/or how to prorate claims and obtain receipts. The client may need to hire an attorney to close the estate by summary settlement. The client may need to make hard decisions about selling property to satisfy claims, or find a way to come up with money to satisfy the claims to retain property. If the client knows the estate will have a deficit before starting the process, they should consider whether they still want to move forward. Priority of payment of claims - Wis. Stat. 859.25.



## **The client disputes claims against the decedent's estate.**

The client will need to hire an attorney for formal probate required for the court to decide the claims.



# Did the decedent receive Medicaid (Title 19) for long-term care?

**TIP!** The client can call the Wisconsin Estate Recovery Program to find out IF there would be a claim against the estate but **NOT** the amount.



**The decedent didn't receive Medicaid for long-term care.**

The Wisconsin Estate Recovery Program won't file a claim against the estate, making handling the claims part of the probate process (potentially) easier.



**The decedent received Medicaid for long-term care.**

The Wisconsin Estate Recovery Program will file a claim against the estate. If the estate does not have enough funds to satisfy the claim, the Estate Recovery Program may require extensive documentation of estate expenses (receipts). The process can significantly delay closing the estate. If the client can't settle the claim, they will need to hire an attorney to close the estate by summary settlement for deficit estates (more later).



## If there is no will, or the will doesn't dispose of the bond requirement - does the personal representative have good credit?

If ordered by the court, the personal representative, even if they have hired an attorney, needs to purchase a surety bond that covers a value of the assets in the probate estate. The cost of the bond can be counted as an expense of the estate. The bond protects heirs, beneficiaries, and creditors of the estate against wrongdoing or negligence by the PR. Example: If the PR fails to meet filing deadlines after multiple warnings, the court may remove the PR and appoint an attorney to handle closing the estate; the bond gets charged and the removed PR will receive a bill for attorney fees that they are responsible for.



### **The proposed PR has good credit.**

The PR should contact bonding companies to try to obtain a bond. They may wish to contact their homeowners/renters insurance company to see if they offer estate bonds, or you can help them search for a few companies that offer “estate bonds” or “probate bonds.”



### **The proposed PR doesn't have good credit.**

The court will not approve the appointment if the PR cannot obtain a bond and another person will need to step forward to serve.

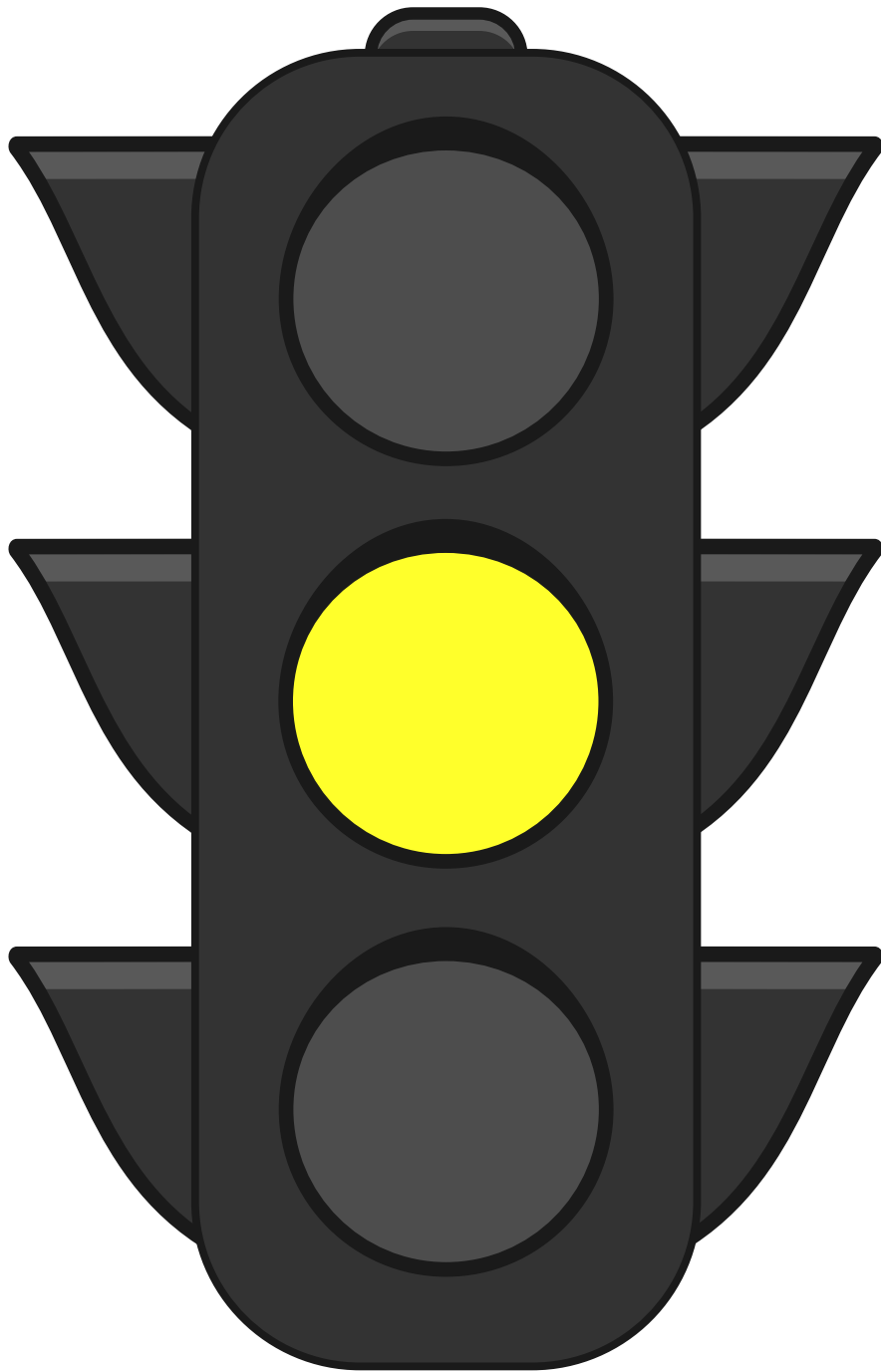
In addition to being creditworthy, the proposed personal representative should be organized, good at recordkeeping, good with deadlines, and comfortable completing paperwork.



**Attendance code break!**



# Special administration (Pt 1)



## **When to use**

- The client needs to do some factfinding about what assets/debts.
- The client needs to access a safe deposit box to search for a will.
- The client needs to take some action to preserve the estate. Examples - property under the control of an uncooperative person, communicate with mortgage lender about a pending foreclosure, people are occupying the decedent's property and damaging it or not paying rent.

## **Considerations**

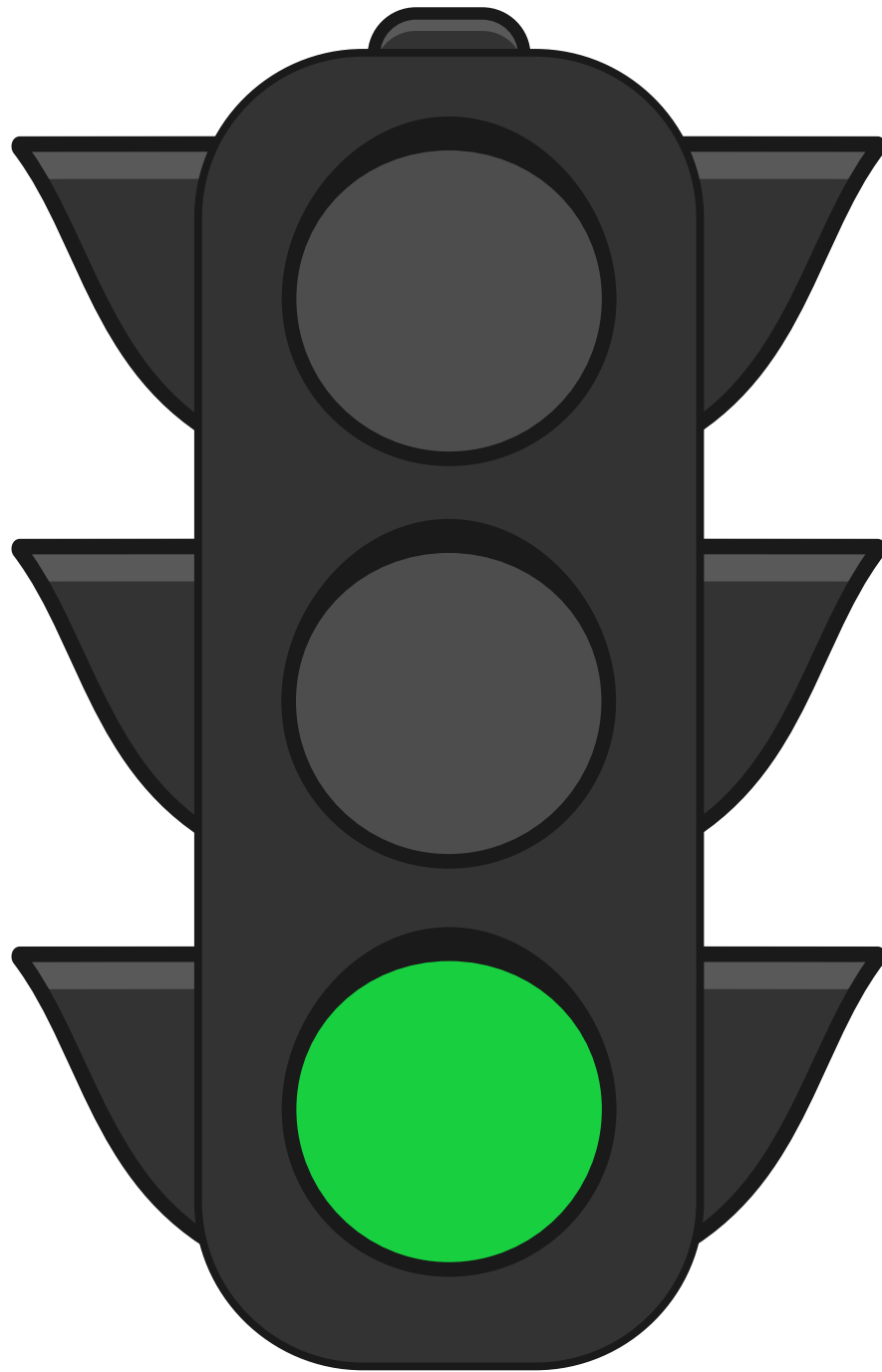
- The special administrator is often granted limited powers. The client may ultimately need to start a probate case or hire an attorney.
- Notice to all interested parties, including people who may have assets, is required by mail at least 20 days before the hearing.

## **Basic forms**

- PR-1850 Petition for Special Administration
- PR-1807 Consent to Serve
- PR-1806 Proof of Heirship
- PR-1846 Waiver and Consent (to be signed by interested parties if possible)
- PR-1851 (Proposed) Order Setting Time to Hear Petition on Special Administration
- PR-1852 (Proposed) Order for Special Administration



# Non-probate transfers



## **Transfers of POD/TOD accounts, jointly owned financial accounts**

- Completed outside of probate court - contact financial institution
- Request multiple certified copies of the death certificate

## **Vehicles**

- WI DMV Guide for Family Members of Recently Deceased:  
<https://wisconsindot.gov/Documents/dmv/vehicles/title-plates/deceasgde.pdf>

## **HT-110 (Termination of Decedent's Interest)**

- **When to use**
  - Transfer to surviving spouse who is on the deed
  - Transfer to non-spouse surviving owner(s) if deed specifies joint tenancy
- **Filing tips**
  - Need a completed eRETR before filing - clients can call the helpline (414-278-3965) to request appointment with MJC paralegal
  - What to bring: HT-110, eRETR receipt, copy of death certificate, \$30
  - File at Register of Deeds in county where property is located (Milw. Co. Courthouse Room 103)

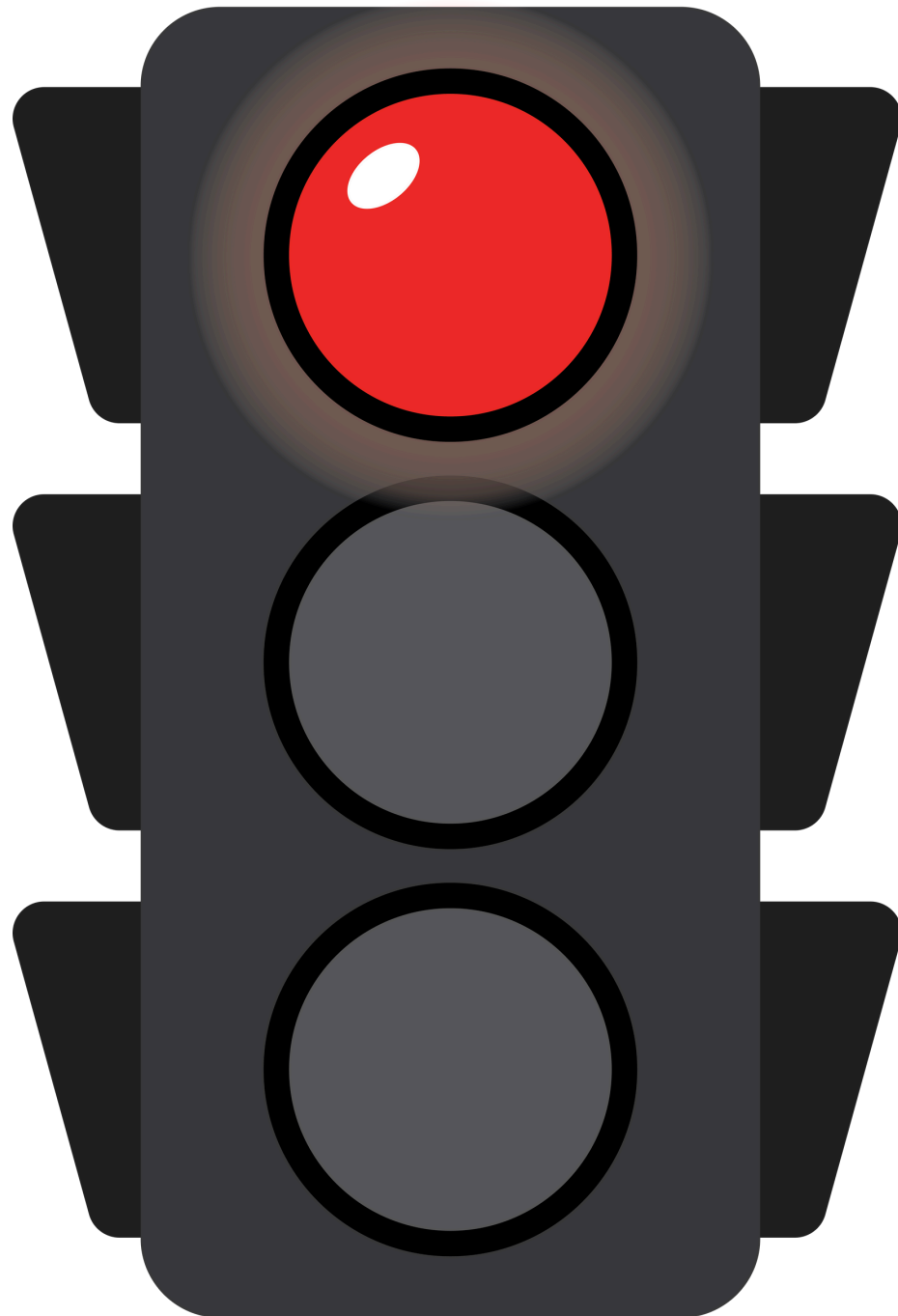
# Non-probate transfers

## Transfer by Affidavit

- **When to use**
  - GROSS value of all assets to be transferred <\$50K
    - DON'T include jointly owned or TOD/POD property.
    - List ALL other assets on the form (don't need to include personal/household items). For real estate, only consider value of decedent's share.
  - If the ONLY assets to transfer are vehicles, use DOT forms.
- **Who can complete the form**
  - If transferring real estate: heir, trustee of decedent's trust, guardian of decedent
  - If transferring only non-real property: heir, trustee, guardian, personal representative named in decedent's will
- **Responsibilities of affiant:** pay decedent's debts, distribute balance of estate to heirs/beneficiaries, notify WI Estate Recovery Program if decedent received certain public benefits
- **Special rules for real estate**
  - Complete Affidavit of Heirship
  - Provide notice to decedent's heirs 30 days before recording Transfer by Affidavit; complete Affidavit of Mailing
  - What to file with Register of Deeds: Transfer by Affidavit, Affidavit of Heirship, Affidavit of Mailing, certified mail receipt to Estate Recovery Program if required, legal description of real estate (copy of deed), eRETR, \$30
- **A note on checks:** If client has a check made out to decedent or estate of decedent, they should send affidavit to issuer and ask check to be reissued in their name.
- **Warnings**
  - Affidavit only allows transfer to 1 person; client may need to take more steps if other owners are entitled to interest in property
  - Mortgages/leins are not extinguished through this transfer

# Summary settlement

Small estate procedure - requires a lawyer, but volunteers can advise if this procedure is right for their client.



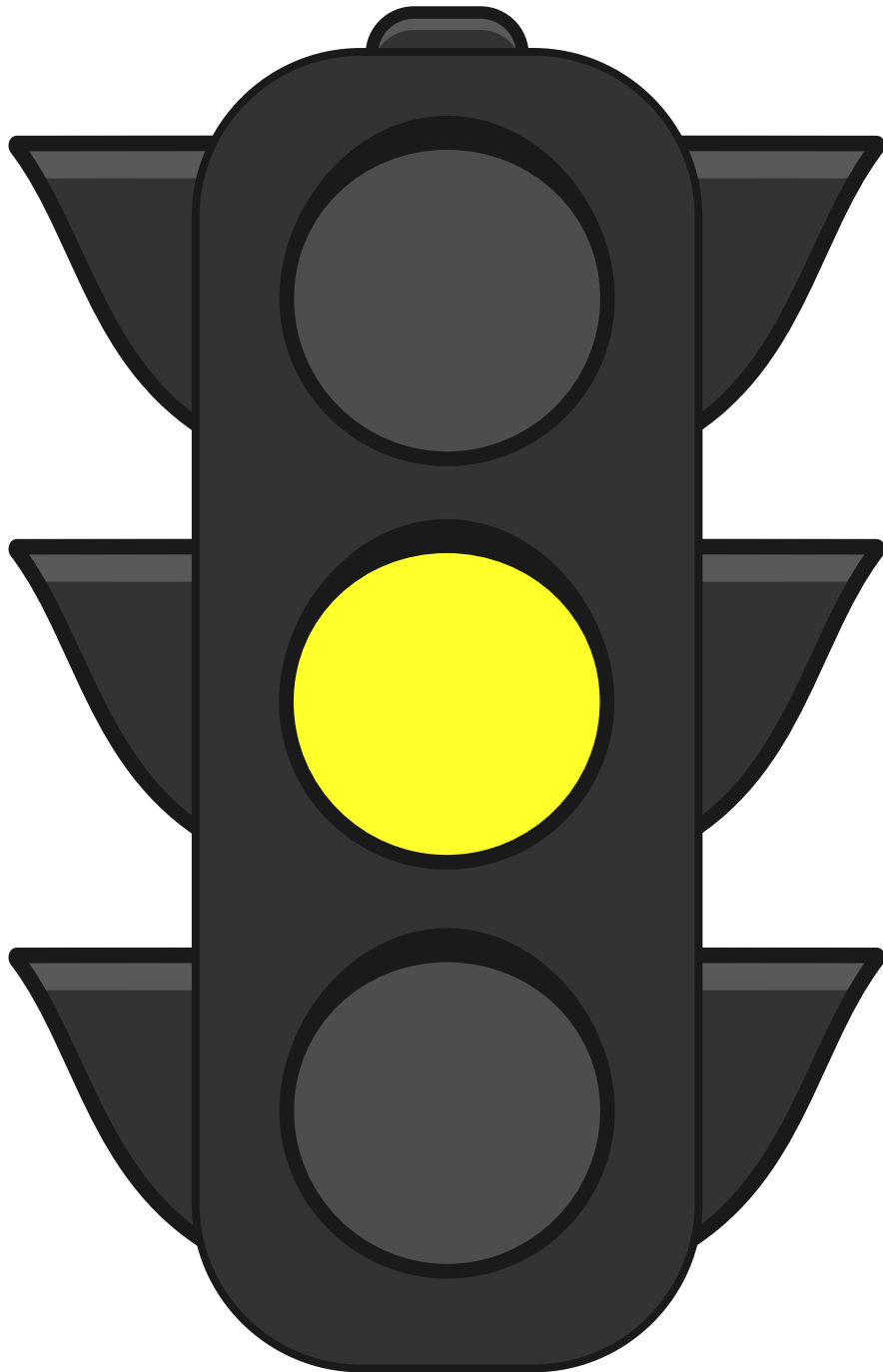
## When to use

- Deficit estate - value of estate less secured debt doesn't exceed value of costs/expenses/allowances/claims
- Value of estate less secured debt <\$50K and decedent is survived by spouse and/or minor children

## Considerations

- Client should consider whether they want to move forward if they know the decedent had a deficit estate. (Sometimes estates end up here when the client doesn't know the total amount of claims and hiring an attorney to wrap up an informal probate is the best/only way to close the estate.)
- Is using a Transfer by Affidavit possible instead?
- A personal representative is not appointed, so there is no one to sign for the estate. A special administrator needs to be appointed for this purpose.

# Summary assignment



## **When to use**

- Value of estate less secured debt <\$50K

## **Considerations**

- Is using a Transfer by Affidavit possible instead?
- A personal representative is not appointed, so there is no one to sign for the estate. A special administrator needs to be appointed for this purpose. Usually informal probate makes more sense.
- The Wisconsin Estate Recovery Program must be mailed notice even if decedent didn't receive public benefits.
- Heirs/beneficiaries must be served a copy of the Petition and Notice of Hearing at least 20 days before the hearing.

## **Basic forms**

- PR-1840 Petition for Summary Assignment
- PR-1842 Notice to Creditors for Summary Assignment (must be mailed to all known creditors at least 20 days before the hearing)
- PR-1843 Order/Notice of Hearing on Petition for Summary Assignment
- PR-1817 Affidavit of Service
- PR-1844 (Proposed) Order on Petition for Summary Assignment

Full list of summary assignment forms on [www.wicourts.gov](http://www.wicourts.gov)

# Informal probate tips



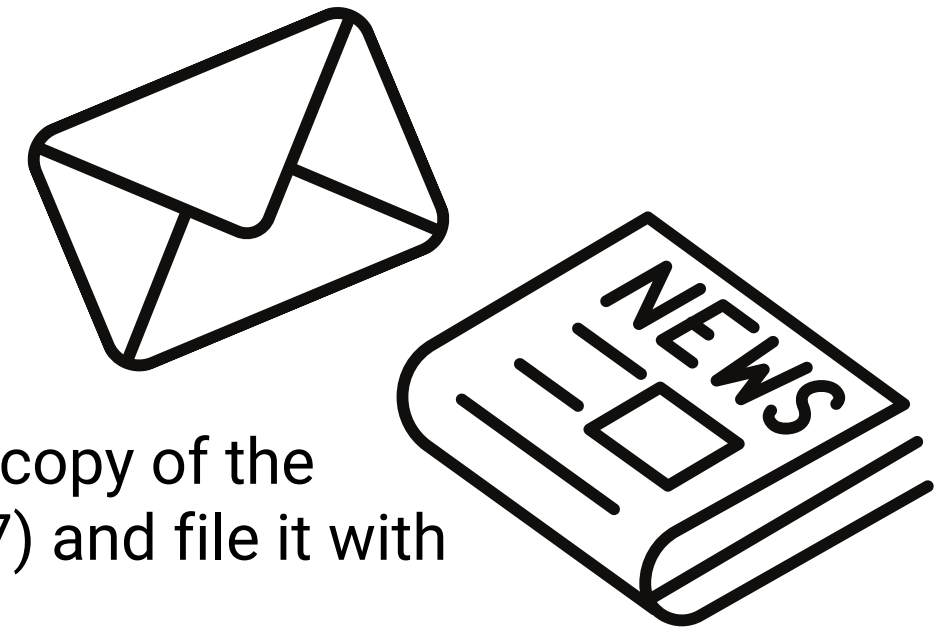
## Complete forms to start informal probate

- PR-1801 Application for Informal Probate
- PR-1806 Proof of Heirship
- PR-1803 Waiver and Consent
- PR-1804 Notice to Creditors
- PR-1807 Consent to Serve
- PR-1808 Statement of Informal Administration
- PR-1810 Domiciliary Letters
- Probate Claims Notice (not a court form) - WI DHS form F-13033

## Tips for starting a probate case

- All interested parties must be listed on the application, even heirs not named in the will or specifically disinherited. Include named personal representatives/trustees and alternates, guardians of anyone who has a guardian.
- The Probate Claims Notice must be completed and sent to the WI Estate Recovery Program after filing the probate case, even if the decedent didn't receive public benefits.
- The court will not sign Domiciliary Letters until the personal representative has obtained a bond (if one is ordered) and submitted proof to the court, and all Waivers are signed and filed.
- There is no fee to START a probate case, but a filing fee will be assessed later when the inventory is filed.

# Informal probate tips



## Tips for service and publication

- The personal representative must send a copy of the Application for Informal Probate and a copy of the will (if any) to all interested parties. The PR should complete an Affidavit of Service (PR-1817) and file it with the court after doing so.
- The PR should send the Probate Claims Notice to the WI Estate Recovery Program by certified mail and save the receipt.
- The PR should mail a copy of the Notice to Creditors to all known creditors.
- The PR must publish the Notice of Creditors in an approved newspaper.
  - There are 2 approved newspapers in Milwaukee County - The Community Journal and The Daily Reporter. The Milwaukee Journal-Sentinel is not an approved newspaper. The cost of publication is not covered by a fee waiver.
  - The first publication date must be within 15 days of the court issuing the claims deadline.
  - The client will receive proof of publication in the mail once notice has been published 3 weeks in a row. Proof of publication must be filed with the court.

## General tips for personal representatives

- Get an EIN number and open an estate account to keep estate and personal funds separate.
- Save receipts and keep detailed records of each expenditure, distribution, or deposit (date, amount, what the payment/deposit was for). Download electronic statements and copies of canceled checks regularly.
- Pay with checks instead of cash.
- Pay close attention to filing deadlines



# Informal probate tips

## **Tips for completing the inventory (due 6 months from the date the PR is appointed)**

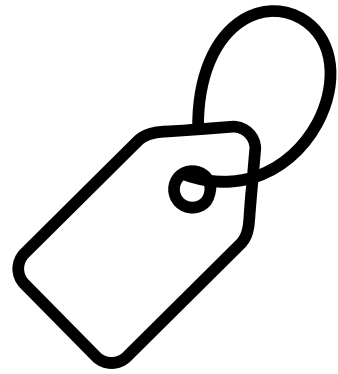
- The inventory is a snapshot of the fair market value of probate assets on the decedent's date of death. Include all solely-owned assets without beneficiary designations, even if no one wants to transfer them or they're sold/disposed of prior to the inventory due date. For financial accounts, contact the financial institution for documentation. If an house or car is sold shortly after the decedent's death, the sales price may be appropriate for the inventory. Consider whether an appraisal is needed.
- Inventory filing fee (0.2% of the value of the estate) is due at filing and not covered by a fee waiver.
- The PR should mail a copy of the inventory to interested parties and complete/file an Affidavit of Service (PR-1817)

## **Tips for handling debts**

- The PR is responsible for paying all known debts and timely-filed claims out of estate assets.
- If estate assets aren't sufficient, the PR must prorate claims according to Wis. Stat. 859.25.
- The PR doesn't have to wait for a creditor to file a claim before paying a known debt.
- An estate receipt is required when a creditor claim is paid. The PR should include a partially-completed Estate Receipt (PR-1815) for the creditor to sign and return.
- Claims filed after the deadline are generally barred unless the court determines otherwise.
- Some debts can be negotiated. The PR should call the creditor and ask if they will accept a lower amount in full satisfaction of the debt.
- The PR should investigate whether the decedent is up to date on filing taxes, file any necessary taxes, pay any tax debts, or collect refunds as an estate asset.
- Disputing claims requires an application for formal probate (and hiring a lawyer).



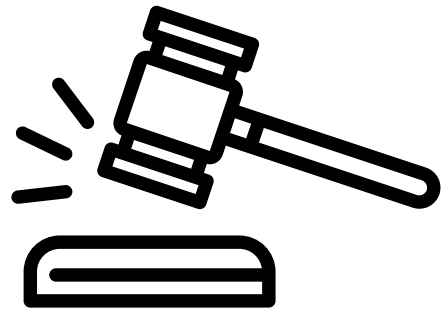
# Informal probate tips



## **Selling and distributing assets**

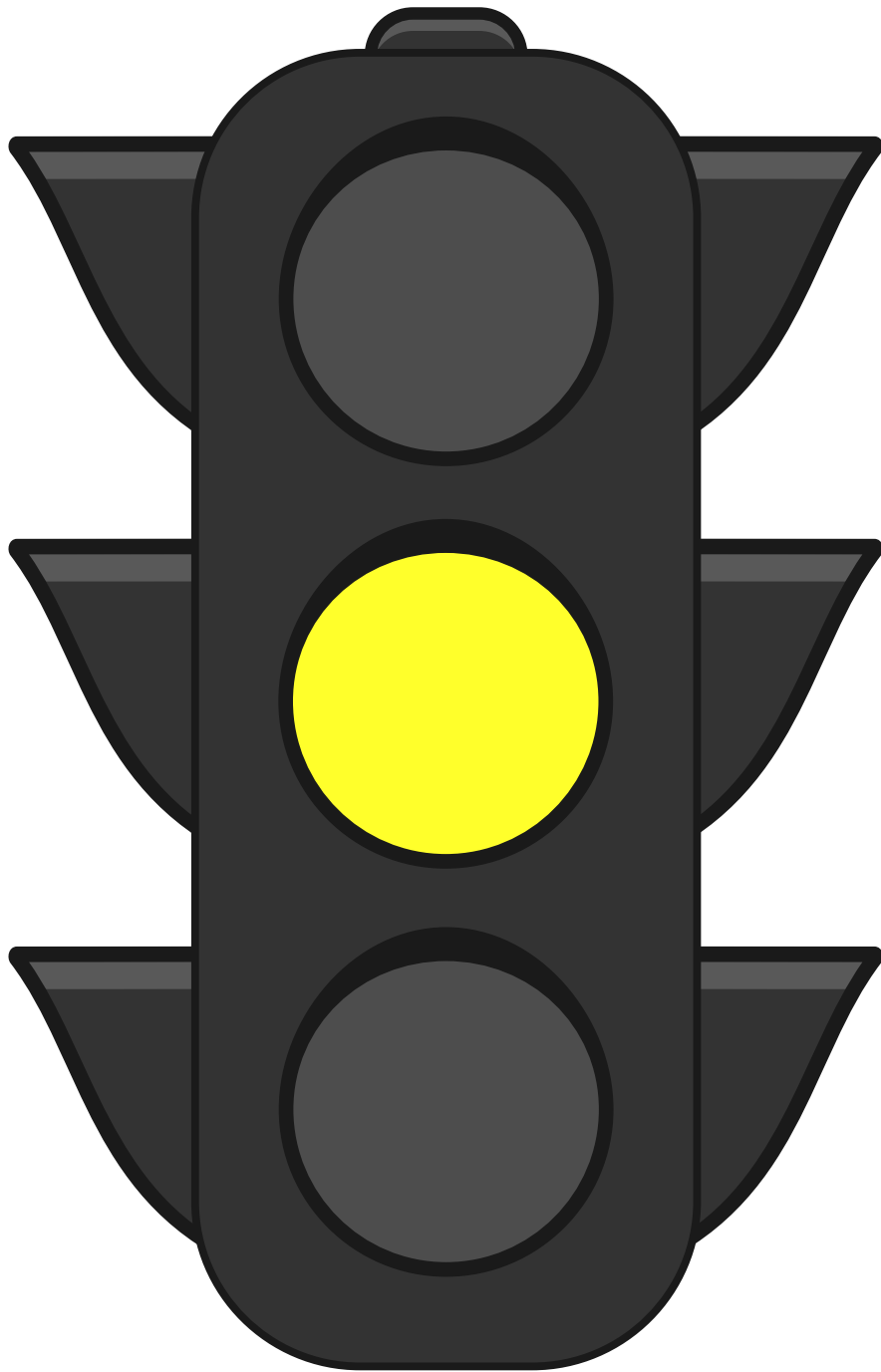
- Document any discrepancies between the sale price and amount listed on the inventory. Retain bills of sale, cashed checks, closing statements for real estate.
- Use a personal representative's deed to transfer real estate.
- After expenses of the estate and claims are paid, the PR must distribute assets according to the will or statutes. The recipient must sign an Estate Receipt.

## **Tips for closing the estate**



- The estate can be closed anytime after the final date to file claims.
- The PR needs to prepare a final Estate Account (PR-1814) of all estate income and expenditures. This may or may not need to be filed with the court (but still needs to be completed if filing is not required).
- Obtain and file estate receipts from heirs/beneficiaries and creditors, proof of service, and proof of publication.
- File any estate or fiduciary tax returns required.
- Obtain and file a Schedule CC (Closing Certificate) from the WI Department of Revenue.
- File the Statement of Personal Representative to Close Estate (PR-1816)

# Special administration (Pt 2)



## **When to use**

- The client has closed their probate case (more than 6 months ago) and assets have been discovered or some other act needs to be performed.

## **Considerations**

- If the probate case was closed within the past 6 months, the personal representative is not yet considered discharged from their duties and can continue to act. The PR may need to take additional action like filing an amended inventory.
- Use the existing probate case number on the special administration forms.

## **Basic forms**

- PR-1850 Petition for Special Administration
- PR-1807 Consent to Serve
- PR-1806 Proof of Heirship
- PR-1846 Waiver and Consent (to be signed by interested parties if possible)
- PR-1851 (Proposed) Order Setting Time to Hear Petition on Special Administration
- PR-1852 (Proposed) Order for Special Administration

# Sample scenarios

- Mrs. Smith's mother died 6 months ago. She is an only child and neither of her parents had any other children. Mrs. Smith and her husband were living in her mother's home. She signs into clinic requesting help with a quit claim deed. She has a copy of her mother's deed, which lists her mother and father as owners of the property. She tells you her father died in 2021. She also brought the 2024 property tax bill, which shows the city assessor's value as \$47,900.
- Ms. Jones wants to start the probate process because her father passed away in 2023. He left his entire estate to her in his will and excluded her adult sister. When filling out the Proof of Heirship, Ms. Jones tells you her dad had another son from his first marriage who died in 2019. She hasn't seen him since they were kids, but she thinks (based on old Facebook pictures) that he might have minor kids.
- Mr. Aziz's mother passed away. He closed her bank accounts that listed him as a joint owner. She sold her car when she went into a nursing home. Her only other asset was a condo that was paid off. Mr. Aziz opened a probate case and was surprised when the WI Estate Recovery Program filed a claim for \$208K. He sold her condo for \$110K. He used \$5,000 for funeral expenses, and \$2,000 for other expenses of putting her condo up for sale. He has receipts for everything. He sent a check for the remainder of the funds to the Estate Recovery Program. He brought in a letter from DHS asking for more documentation about estate expenses. He's worried he'll have to pay the remainder out of his own funds.
- Mr. Lopez started the probate process upon discovering a foreclosure letter in his recently deceased father's mailbox. He wanted to save the house from foreclosure and rent it out for extra income. He got injured and had to take a different job making less money. He wasn't able to refinance his father's mortgage and decided to let the house go to foreclosure. He didn't file an inventory and received a notice from the court about an Order to Show Cause Hearing. He doesn't want to continue the probate process and tells you he hopes to attend the hearing and ask the judge to dismiss the case.

# Resources & referrals

## Personal Representative's Guide

<https://www.wicourts.gov/services/public/selfhelp/docs/probateguide.pdf>

## Brief legal advice

MVLC Probate Clinics - coming in March!  
Free Legal Answers:  
<https://wi.freelegalanswers.org/>

## LRIS

Milwaukee Bar Association: 414-274-6768  
State Bar: 800-362-9082

## Legal Action of Wisconsin

For cases with no significant disputes. Limited availability.  
855-947-2529

