



Senior Law Project

Preparation of Voluntary
Administration Paperwork

Volunteers of Legal Service



VOLS was founded in 1984 to close the access to justice gap through partnerships with community organizations, law firms and corporations. We train and mentor pro bono attorneys from law firms and corporations to provide free legal services to our clients.



What is Voluntary Administration



- The process of settling a small estate by obtaining access to and distributing the decedent's property.
- Small estate:
 - Personal property valued under \$50,000;
 - No real property in the decedent's name alone; and
 - No possibility of a wrongful death or other lawsuit in the future.
- What is **NOT** a part of an estate:
 - Assets with living beneficiaries (e.g., retirement accounts with living beneficiaries);
 - Assets which are jointly owned (e.g., joint bank accounts or jointly held property); and
 - Property held in trust.
- Can be done regardless of whether the decedent left a **last will and testament**.
- The person handling the small estate is the **voluntary administrator**.
- SCPA Article 13.

Who Can Be the Voluntary Administrator



- If the decedent **left a last will and testament**, the executor named in the document may apply to be the voluntary administrator.
 - If the named executor cannot do so, the alternate executor may apply. The primary executor will need to sign a renunciation, or if deceased, their death certificate must be filed.
 - If there is no named executor/alternate executor available, priority goes to the sole beneficiary, followed by any beneficiary, followed by the closest distributee (spouse, adult children, adult grandchildren, parents, adult siblings, nieces/nephews, aunts/uncles).
- If the decedent **did not leave a last will and testament**, the court looks to the priority of the above-noted distributees.
- If there is no one available to serve, the **Public Administrator** will handle the estate.

Who Cannot Be the Voluntary Administrator



- **Automatically barred:**
 - Infants;
 - Incompetents;
 - A non-domiciliary non-citizen except one who is a foreign guardian, or one who shall serve with one or more co-fiduciaries, at least one of whom is a resident of NYS; and
 - Those who do not possess the qualifications required of a fiduciary by reason of substance abuse, dishonesty, improvidence, want of understanding, or who are otherwise unfit to serve.
- **Ineligible in the court's discretion:**
 - Those unable to read and write English; and
 - People convicted of a felony whose crime may be adverse to the welfare of the estate, including crimes such as embezzlement or any crime where there was a misappropriation of money or breach of fiduciary duty.

Voluntary Administration Paperwork



- **Always required**
 - Affidavit in relation to settlement of small estate under Article 13, SCPA;
 - Report and account of settlement of small estate pursuant to Article 13, SCPA.
- **Sometimes required**
 - Family tree affidavit;
 - Heirship/pedigree affidavit (depends on court);
 - Renunciation of voluntary administration;
 - Due diligence affidavit; and
 - Amended affidavit in relation to settlement of small estate under Article 13, SCPA.



- Must be completed.
- Requires information about your client and information about the decedent, including their distributees, their beneficiaries, their items of personal property and their values, and their liabilities and their amounts.

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF _____
-----X
VOLUNTARY ADMINISTRATION, Estate of

**AFFIDAVIT IN RELATION TO
SETTLEMENT OF ESTATE UNDER
ARTICLE 13, SCPA**

File No. _____
(as of 11/2019)

Deceased.
-----X

(INSTRUCTIONS: In completing this form, answer each question. This may be done in some instances by crossing out words in parenthesis and in some instances by inserting the required information.)

STATE OF _____)
COUNTY OF _____) ss.:

I, _____, being duly sworn, depose and say

(1) My permanent address is: _____
(Street Address) (City/Town/Village)

(County) (State) (Zip) (Telephone Number)

My mailing address is: _____
(If different from permanent address)

My email address is: _____

(2) My interest is:] Distributee of decedent _____
(Relationship)
] Other (Specify) _____

(3) The name, permanent address, date, place of death, and citizenship of the decedent, to whose estate this proceeding relates, are as follows:

Name of Decedent (a/k/a, if applicable): _____

Permanent Address: _____
(Street Address) (City/Town/Village) (County) (State)

Date of Death: _____ Place of Death: _____
(City/Town/Village) (State)

Citizenship of Decedent: _____

(4) Decedent died:] Intestate (without a will)
] Testate (the original will is attached)

(5) A search of the records of the Court shows that no application has been made in, the estate of the decedent for voluntary administration, letters of administration or for probate of a will, and your affiant is informed and verily believes that no such application ever has been made to any other Surrogate's Court in this state.

If residing in a nursing home, address depends on intent to return to community.



(6) The names and addresses of the decedent's distributees under New York law, including non-marital children and descendants of predeceased non-marital children, and their relationship to the decedent, are as follows: (If more space is needed, add a sheet of paper)

See EPTL 4-1.1.



<u>Name</u>	<u>Mailing Address, (Including Zip)</u>	<u>Relationship Indicate if non-marital)</u>

(7) (If decedent had a will) The name and address of all beneficiaries in the will of the decedent filed herewith are as follows: (If more space is needed, add a sheet of paper)

<u>Name</u>	<u>Mailing Address, (Including Zip)</u>	<u>Bequest</u>

8) The value of the entire personal property, wherever located, of the decedent, exclusive of joint bank accounts, trust accounts, U.S. savings bonds POD (payable on death), and jointly owned personal property, or property exempt under the EPTL §5-3.1, **does not exceed \$50,000.00.**

9) The following, exclusive of joint bank accounts, trust accounts, U.S. savings bonds POD (payable on death), and jointly owned personal property, or property exempt under EPTL §5-3.1, is a complete list of all personal property owned by the decedent, either standing in his/her own name or owned by him/her beneficially and including items of value in any safe deposit box. (If more space is needed, add a sheet of paper)

Value of account may be unknown.



Client may be unable to access decedent's apartment.



<u>Items of Personal Property Separately Listed</u>	<u>Value of Each Item</u>



Decedent may have left a safe deposit box.

TOTAL \$ _____

(10) All the **liabilities** of the decedent known to me are as follows: (If more space is needed, add a sheet of paper)

Include funeral bill.



Name of Creditor	Amount Owed
_____	_____
_____	_____
_____	_____



Liability amount may be unknown.

(11) I undertake to act as voluntary administrator of the decedent's estate, and to administer it pursuant to Article 13 of the Surrogate's Court Procedure Act. I agree to reduce all of the decedent's assets to possession; to liquidate such assets to the extent necessary; to open an estate bank account in a bank of deposit or savings bank in this state, in which I shall deposit all money received; to sign all checks drawn on or withdrawals from such account in the name of the estate by myself, as voluntary administrator; to pay the expenses of administration, the decedent's reasonable funeral expenses and his/her debts in the order provided by law; and to distribute the balance to the person or persons and in the amount or amounts provided by law. As voluntary administrator, I shall file in this court an account of all receipts and of disbursements made.

(12) I understand that this proceeding will not determine the estate tax liability, if any, in the event that the decedent had any interest in real property or any joint bank accounts, trust accounts, U.S. savings bonds POD (payable on death), or jointly owned or trust property.

(13) If letters testamentary or of administration are later granted, I acknowledge that my powers as voluntary administrator shall cease, and I shall deliver to the court-appointed fiduciary a complete statement of my account and all assets and funds of the estate in my possession.

Signature of Affiant

Print Name

Sworn to before me on

_____, 20 ____

Notary Public
My Commission Expires:
(Affix Notary Stamp or Seal)

Signature of Attorney: _____

Print Name: _____

Firm Name: _____ Tel. No.: _____

Address of Attorney: _____

An attorney licensed to practice in New York State, affiliated with [FIRM NAME], assisted in the preparation of this document on a pro bono basis. Neither the firm nor the attorney is entering an appearance on behalf of this party.

Family Tree Affidavit



- May or may not need to be completed. If the decedent only has one distributee, or if the only distributees are grandparents, aunts/uncles, or cousins, this must be completed.
- Person completing form must:
 - Know the decedent's family tree;
 - Have no financial interest in the decedent's estate; and
 - Not be the only distributee, or the only distributee's spouse or child.

- ▶ Required if the decedent (the person who died) has only one distributee (heir) or if the distributees are grandparents, aunts-uncles, or cousins. Must be completed by a person who knows decedent's family tree, has no financial interest, and is not the only distributee, or the only distributee's spouse or child (UR 207.16[c]).
- ▶ Complete only as much of the form as required. If there are no relatives in a section, write "None."
- ▶ If a person's date of death is unknown, indicate whether that person died before the decedent (by writing "predeceased") or died after the decedent (by writing "post-deceased").
- ▶ If more space is needed, attach additional sheet(s). Sign on page 4 in front of a Notary Public.

**SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

X
PROCEEDING FOR **FAMILY TREE**
Estate of _____ **AFFIDAVIT**
 a/k/a _____
 _____ **Deceased** **File No.** _____
 _____ X

STATE OF _____)
COUNTY OF _____)
 I, _____, **BEING DULY SWORN, DEPOSE AND SAY:**
I AM OVER THE AGE OF 18 AND RESIDE AT: _____

MY RELATIONSHIP TO THE DECEDENT IS (examples: cousin, family friend, clergyperson, etc.):

I KNEW THE DECEDENT FOR _____ **YEARS, AND MY KNOWLEDGE OF HIS/HER FAMILY TREE IS**
BASED ON (examples: conversations with decedent or decedent's family, visits, etc.):

- 1. a) DECEDENT'S MARRIAGES** (name most recent spouses first): Decedent was never married [].
SURVIVING SPOUSE: _____ Surviving spouse died after decedent [].
EX-SPOUSE: _____ [] divorced or [] died while married to decedent.
EX-SPOUSE: _____ [] divorced or [] died while married to decedent.

b) DECEDENT'S CHILDREN (include non-marital children [born out of wedlock] and adopted children):

NAME:	DATE OF DEATH (if deceased):
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If there are no relatives in a section, type "none". →

← DOD may be unknown.

c) DECEDENT'S GRANDCHILDREN AND THEIR ABOVE-NAMED PARENT:

<u>NAME:</u>	<u>CHILD OF:</u>	<u>DATE OF DEATH</u> (if deceased):

d) DECEDENT'S GREAT GRANDCHILDREN AND THEIR ABOVE-NAMED PARENT:

<u>NAME:</u>	<u>CHILD OF:</u>	<u>DATE OF DEATH</u> (if deceased):

Note the "stop" →

==== **STOP.** Go to **(2)** only if no one is listed above, everyone listed above died before (predeceased) the decedent or all "Decedent's Children" listed above are non-marital children (born out of wedlock) of a male decedent. =====

2. DECEDENT'S PARENTS: DATE OF DEATH (if deceased):

MOTHER: _____

FATHER: _____

===== **STOP.** Go to **(3)** only if both parents died before (predeceased) the decedent. =====

3. a) DECEDENT'S BROTHERS AND SISTERS (include half-brothers and half-sisters):

<u>NAME:</u>	<u>DATE OF DEATH</u> (if deceased):

b) DECEDENT'S NIECES AND NEPHEWS AND THEIR ABOVE-NAMED PARENT:

<u>NAME:</u>	<u>CHILD OF:</u>	<u>DATE OF DEATH</u> (if deceased):

Heirship/Pedigree Affidavit



- May be required depending on court, despite similarity to family tree affidavit.
- Person completing form must:
 - Know the decedent's family tree;
 - Be only up to the level of niece/nephew, if they are a distributee;
 - Have known the decedent for at least ten years, and in some counties, twenty years;
 - Have no financial interest in the estate; and
 - Not be the only distributee, or the only distributee's spouse or child.

HEIRSHIP / PEDIGREE AFFIDAVIT - Required in all Estate Proceedings

If the decedent (the person who died) has only one distributee (heir) or more than one distributee [spouse; child/child of pre deceased child; parent; sibling; niece/nephew; grand parent; aunt/uncle or cousin].

- May be completed by anyone who knows decedent's family tree where the distributee is up to the level of niece/nephew. From the level of grand parents, aunts/uncles, or cousins that person must have no financial interest, and is not the only distributee, or the only distributee's spouse or child (UR 207.16c). A Due Diligence Affidavit may also be required at this level.
- Complete only as much of the form as required. If there are no relatives in a section, write "None."
- If a person's date of death is unknown, indicate whether that person died before the decedent (by writing "predeceased") or died after the decedent (by writing "post-deceased").
- If more space is needed, attach additional sheet(s). Sign on page 4 in front of a Notary Public.

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

PROCEEDING FOR
Estate of

AFFIDAVIT

Deceased

File No.

STATE OF)
COUNTY OF)

I, _____, BEING DULY SWORN, DEPOSE AND SAY:

I AM OVER THE AGE OF 18 AND RESIDE AT: _____

MY RELATIONSHIP TO THE DECEDENT IS (examples: cousin, family friend, clergy person, etc.): _____

I KNEW THE DECEDENT FOR _____ YEARS, AND MY KNOWLEDGE OF HIS/HER FAMILY TREE IS BASED ON _____

1. a) DECEDENT'S MARRIAGES (name most recent spouses first):

➤ If surviving spouse died after the decedent, check here [] .

SURVIVING SPOUSE: _____

EX-SPOUSE: _____ [] divorced or [] died while married to decedent.

EX-SPOUSE: _____ [] divorced or [] died while married to decedent.

b) DECEDENT'S CHILDREN (include non-marital children [born out of wedlock] and adopted children):

NAME: _____ **Marital(M)/Non-Marital(NM)/Adopted(A)** **DATE OF DEATH** (if deceased): _____

c) DECEDENT'S GRANDCHILDREN AND THEIR ABOVE-NAMED PARENT:

NAME: _____ **CHILD OF:** _____ **DATE OF DEATH** (if deceased): _____

d) DECEDENT'S GREAT GRANDCHILDREN AND THEIR ABOVE-NAMED PARENT:

NAME: _____ **CHILD OF:** _____ **DATE OF DEATH** (if deceased): _____

STOP. Go to (2) only if no one is listed above, everyone listed above died before (predeceased) the decedent or all "Decedent's Children" listed above are non-marital children (born out of wedlock) of a male decedent.

2. DECEDENT'S PARENTS: _____ **DATE OF DEATH** (if deceased): _____

MOTHER: _____

FATHER: _____

STOP. Go to (3) only if both parents died before (predeceased) the decedent.

3. a) DECEDENT'S BROTHERS AND SISTERS (include half-brothers and half-sisters):

NAME: _____ **DATE OF DEATH** (if deceased): _____

b) DECEDENT'S NIECES AND NEPHEWS AND THEIR ABOVE-NAMED PARENT:

NAME: _____ **CHILD OF:** _____ **DATE OF DEATH** (if deceased): _____

5. a) **DECEDENT'S PATERNAL GRANDPARENTS** (father's side of family): **DATE OF DEATH** (if deceased):

GRANDMOTHER: _____

GRANDFATHER: _____

b) **DECEDENT'S PATERNAL AUNTS AND UNCLES:**

NAME: _____ **DATE OF DEATH** (if deceased): _____

c) **DECEDENT'S PATERNAL FIRST COUSINS AND THEIR ABOVE-NAMED PARENT:**

NAME: _____ **CHILD OF:** _____ **DATE OF DEATH** (if deceased): _____

==== *If everyone listed above predeceased the decedent, list any first cousins once removed (children of predeceased first cousins) who survived the decedent and their above-named parent on a separate sheet (see EPTL 4-1.1[a][6],[7]).* =====

THERE ARE NO OTHER PERSONS WHOSE DEGREE OF RELATIONSHIP TO THE DECEDENT IS THE SAME AS, OR NEARER TO, THE PERSONS NAMED ABOVE.

Signature: _____

Sworn to before me on

_____, 20____

Print Name

Notary Public
My Commission Expires:
(Affix Notary Stamp or Seal)

Renunciation of Voluntary Administration



If your client is not first in line to petition for voluntary administration, and the person/s prioritized in relation to your client does not want to administer the estate, such person will need to sign this form.

SURROGATE'S COURT OF THE STATE OF NEW YORK

COUNTY OF _____

VOLUNTARY ADMINISTRATION, Estate of

Deceased.

RENUNCIATION OF VOLUNTARY
ADMINISTRATION
(as of 11/2019)

File No. _____

TO THE SURROGATE'S COURT:

The undersigned, whose domiciliary address is

(Street Address) (City/Town/Village) (State) (Zip)

Mailing Address _____
(If different from domicile)

being of full age and [check and complete]

a distributee of the above-named decedent and related as a

(state relationship)

a fiduciary or legatee named in the decedent's will dated _____

hereby personally appears herein and renounces all right to act as voluntary administrator of the goods, chattels and credits of the decedent.

(Renouncing Party)

(Print Name)

STATE OF _____)
) ss.:
COUNTY OF _____)

On the _____ day of _____, 20____, before me personally came _____, known to me to be the individual described in and who executed the foregoing instrument, and to me such person duly acknowledged that he/she executed the same.

Notary Public

My commission expires: _____

Signature of Attorney: _____

Print Name of Attorney: _____

Firm Name: _____ Tel. No. _____

Address of Attorney: _____

Due Diligence Affidavit



- May need to be completed if client is unable to obtain information such as the full name of someone who must be listed on a form, or if the decedent may have been survived by only one distributee or distributees who are aunts/uncles, first cousins, or first cousins once removed.
- Requires information on distributees and other family members that is known based on a diligent search of the decedent's assets and related searches.
- Must be completed by someone who will not receive a share of the decedent's estate.
- Must show proof as to how each distributee is related to decedent, which includes a family tree, table, or diagram.
- If there is required information that cannot be obtained, affiant must show they have used due diligence in endeavoring to identify the identity, names, and addresses of such people.
 - Results should be obtained from sources including the decedent's personal belongings and the DMV and Board of Elections.

**SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF _____**

PROCEEDING FOR VOLUNTARY ADMINISTRATION
Estate of _____

**DUE DILIGENCE
AFFIDAVIT**

a/k/a _____

Deceased

File No. _____ X

STATE OF _____)
COUNTY OF _____)

I, _____, BEING DULY SWORN, DEPOSE AND SAY:

I AM OVER THE AGE OF 18 AND RESIDE AT: _____

MY RELATIONSHIP TO THE DECEDENT IS (examples: cousin, family friend, clergyperson, etc.): _____

I KNEW THE DECEDENT FOR _____ YEARS, AND MY KNOWLEDGE OF HIS/HER FAMILY TREE IS BASED ON (examples: conversations with decedent or decedent's family, visits, etc.): _____

The decedent was survived by [no distributee][only one distributee][the only distributee(s) relationship to the decedent is (grandparents, aunts, uncles, first cousins, or first cousins once removed)]

IF ONLY ONE: The relationship of the sole distributee and the decedent is (FILL IN FROM FAMILY TREE AFFIDAVIT?) Attached exhibit of family tree/table? (NO TREE, TABLE, OR DIAGRAM IS NECESSARY IF THE SOLE DISTRIBUTEES IS THE SPOUSE OR ONLY CHILD OF THE DECEDENT)

IF MULTIPLE BUT ONLY GRANDPARENTS, AUNTS, UNCLAS, FIRST COUSINS, ETC.: The relationship between the known distributees and the decedent are provided in the attached diagram?

No other persons of the same or a near degree of relationships survived the decedent. The decedent had (parents, spouse, children, siblings) who are deceased (date of death?)

This is proven by this affidavit of an uninterested person. (IF THERE IS ONLY ONE DISTRIBUTEES, THE UNINTERESTED TESTATOR CANNOT BE THE SPOUSE OR CHILD OF THE DISTRIBUTEES)

I, petitioner, am a disinterested party and will not receive anything from the estate.

There are no other known distributees of the decedent's estate. In conducting due diligence to ascertain the unknown identity, names, and addresses of all such persons who are or may be distributees of the Estate of [DECEDENT], I took the following steps:

1. I examined the decedent's personal belongings, including address books (examples: [iPhone] [calendar] [any other contact list]);
2. I inquired the following individuals and institutions
 - a. Relatives: I contacted X's cousin and she informed me that there are no other relatives of decedent,



Affiant must take steps to find information.

- etc.
- b. Neighbors
- c. Friends
- d. Former business associates and employers
- e. Post office
- f. Banks

3. I sent a letter to the last known address of any missing distributees (should be attached as exhibit) (I sent a letter to [missing distributee] at [last known address] on [date] informing them that [decedent] had died and they may have an interest in the estate.
4. I (sent a letter, called via telephone, conducted an internet search for) persons of same or similar name in the area where the person being sought lived (example: ancestry search, google search, checking the phone book)
5. To ascertain the address of [known distributee/next of kin], I wrote to the DMV and Board of Elections of the state or county of [HIS/HER] last-known address or examined the records

Signature: _____

Sworn to before me on

_____, 20____

Print Name

Notary Public

My Commission Expires:

(Affix Notary Stamp or Seal)

Affidavit should include exhibits.



- Must be completed if, after becoming appointed voluntary administrator, client discovers there is personal property in addition to what was written on the original affidavit, as long as the value of the estate is still under \$50,000 and otherwise still qualifies as a small estate.



- What's needed:
 - Above-noted paperwork;
 - Original death certificate;
 - Copy of marriage certificate if client is surviving spouse of decedent;
 - NYPD property voucher if there is one;
 - \$1 filing fee payable by cash or money order;
 - Copy of the funeral bill if there is one; and
 - Original plus one copy of the last will and testament – **DO NOT REMOVE THE STAPLES.**
 - An affidavit of attesting witnesses, AKA self-proving affidavit, should accompany the will. If one was never completed, the will witnesses will need to be found to complete one.
- Everything is filed by client in the Surrogate's Court of the county in which the decedent was domiciled.

What Happens Next



- If the judge decides the client qualifies to be the voluntary administrator, the client will be issued certificates of voluntary administration.
- One certificate of voluntary administration needed for each item in the paperwork, which are presented to the proper entity to complete a task.
- The voluntary administrator must:
 - Obtain decedent's property;
 - Open an estate account to deposit all monies belonging to the estate;
 - Pay any debts or expenses; and
 - Distribute what is left to the will beneficiaries or decedent's heirs.



- Upon completion of the above duties, the voluntary administrator must close the estate by completing and filing this form.
- They must also file receipts or cancelled checks showing the payment of expenses of administration, disbursements, or distributions.

Issues That May Arise



- If it's discovered that the estate's value is greater than \$50,000 and/or that there is real property in the decedent's name alone, then the estate cannot be handled through voluntary administration. Either probate or administration will need to happen.
- If a beneficiary (if there was a will) or heir (if there was no will) of the decedent post-deceases the decedent, an estate will need to be opened for this person. This person's estate will be entitled to their share of the decedent's estate.

Additional Resources



www.volsprobono.org/probonolibrary

Questions?



Thank You!