

Ancillary Probate Proceeding Checklist

(see Surrogate's Court Form AP-1, 12/97, rev. 4/98)

This Checklist is provided for your convenience while completing the petition and the checklist should not be returned to the Court.

NOTE: An ancillary probate may be used when a non-domiciliary leaves real and/or personal property which needs to be administered under New York State law and there has been probate in the foreign (domiciliary) jurisdiction.

**Fill In All Areas On All Pages of Petition - Also Mark When Not Applicable Where Necessary
Check All Forms To Make Sure Venue Is Correct - Appropriate County Is Listed**

CHECK: IS THE ATTORNEY OF RECORD LICENSED TO PRACTICE IN THE STATE OF NEW YORK?

PET ¶ #	DESCRIPTION	YES	NO
	Is the captioned name the same as the signature on the Will and ¶2 of the petition?		
	If A/K/A's are they listed in the caption and also under ¶2 of the petition?		
	Has the type of Letters been checked?		
1.	<p>Is the petitioner the person expressly appointed in the Will as executor with respect to property located in this State or his/her designee? (see SCPA §1604)</p> <p>If Not: Is petitioner the fiduciary appointed to act in the domiciliary jurisdiction or his/her designee?</p> <p>If Not: Is petitioner the person acting in the domiciliary jurisdiction to administer and distribute the testator's estate?</p> <p>If Not: Is petitioner a person entitled to letters of administration c.t.a. or his/her designee? (see SCPA §1418)</p> <p>If Not: Is petitioner a creditor, public administrator (County Treasurer) or person interested or to whom letters may issue? (see SCPA §1609.1)</p>		
<p><i>NOTE: Non-domiciliary alien executor, though ineligible to act in this jurisdiction (unless said executor has a co-executor who is a citizen), has a right to designate an ancillary fiduciary. (see SCPA §707 and §1608)</i></p>			
2.	<p>Verify information set forth in Authenticated documents from foreign state.</p> <p><i>NOTE: Exemplified/Authenticated Record should include copies of Will, Decree or Order Admitting Will to probate in the foreign (domiciliary) jurisdiction, and Letters issued thereon in the foreign jurisdiction (if the issuance of Ancillary Letters are being requested). (see SCPA §1614 and CPLR §4540) If no letters were issued in foreign jurisdiction then explanatory affidavit may be required.</i></p> <p><i>NOTE: Exemplifications and/or authenticated documents must be <u>unaltered</u> - i.e. should <u>not be unstapled to photocopy and should not be attached to petition.</u></i></p>		

PET #	DESCRIPTION	YES	NO
2 cont.	<i>NOTE: Documents filed in a foreign language shall be accompanied by an English translation and an affidavit by the translator stating his/her qualifications and that the translation is accurate. [see CPLR §2101(b)].</i>		
3.	<p>Verify again that all information set forth is as indicated in the Exemplified and/or Authenticated documents from foreign state.</p> <p><i>NOTE: If petition indicates that time has not yet passed for Will to be subject to contest under the laws of the foreign state, do not admit to ancillary probate, hold in abeyance until such time as verification from foreign Court is filed indicating that time has passed and it is not being contested.</i></p> <p><i>NOTE: Bond of Ancillary Fiduciary may be required. [see SCPA §801(c)(ii)]</i></p>		
4a.	<p>Is all the New York State property listed with complete address, description and value?</p> <p>Verify jurisdiction at this time with property situate in your County, real or personal. (see SCPA §206)</p> <p>All items must be completed. If non-applicable, please indicate.</p> <p><i>NOTE: Filing fee on Ancillary Probate is based on the value of New York Property only. (see SCPA §2402)</i></p>		
4b.	If cause of action is listed <u>complete details must be included</u> ; if none, so state.		
5.	<p>Issue citation for service on Interested parties listed here as set forth in form (unless waivers and consents to ancillary probate have been submitted).</p> <p><u>Always cite the New York State Department of Taxation and Finance (see SCPA §1609.3) UNLESS a Notice of Appearance and Consent by Tax Commissioner has been filed with Stipulation Reserving Domicile.</u></p> <p>If Letters Are Requested Cite: 1) Domiciliary (New York State) Creditors or those claiming to be creditors; 2) Those entitled to letters or entitled to designate an appointee. (see instructions on item 1 of this checklist for those entitled to letters - SCPA §1604)</p>		
6.	<p>Only beneficiaries who reside in New York State (domiciliary beneficiaries) and who are named in the Will/Codicil being offered for Ancillary Probate need be listed here.</p> <p><u>If Letters are Requested: Notice of Ancillary Probate with proof of mailing to all listed if they have not been served with process, waiver, or otherwise appeared in the proceeding. Both (a) and (b) must be completed. If none applicable, so indicate.</u></p>		

PET #	DESCRIPTION	YES	NO
7.	This must be completed. Either "except" crossed out or "none" indicated.		
	<p>Under WHEREFORE Clause: has all relief requested been checked and completed?</p> <p>Is petition dated, signed, verified, properly notarized (including proper jurat and expiration date of notary's commission)?</p> <p>Is Combined Verification, Oath and Designation signed?</p> <p>Does it set forth proposed fiduciary's physical address?</p> <p>Is proposed fiduciary a bank? (If yes, submit a combined Corporate Verification, Consent and Designation)</p>		
<i>NOTE: Certification must be provided from a financial institution that they are qualified to act as a fiduciary in the State of New York.</i>			
	<p>Is attorney's name, address and phone number listed?</p> <p>Is Part 130 Certification completed by attorney or self-represented party?</p> <p>If <u>NOT</u>, has a separate certification as to Part 130 signing requirements been included?</p>		
If forms are computer generated, has a certification pursuant to Court Rules §207.4 been attached?			

PARTIAL FEE SCHEDULE		SCPA/EPTL § or Rule #														
Filing Fee	<p>Have the proper fees been included with petition?</p> <p>Fees per schedule; \$6.00 for each Certificate of Appointment.</p> <p>Filing fee is based upon the values of the <u>New York State Property only</u> owned individually by the decedent or payable to the Estate - see SCPA §2402(8)</p> <table data-bbox="487 1596 1023 1890"> <tr> <td>0 but under 10,000</td> <td>\$ 45.00</td> </tr> <tr> <td>10,000 but under 20,000</td> <td>75.00</td> </tr> <tr> <td>20,000 but under 50,000</td> <td>215.00</td> </tr> <tr> <td>50,000 but under 100,000</td> <td>280.00</td> </tr> <tr> <td>100,000 but under 250,000</td> <td>420.00</td> </tr> <tr> <td>250,000 but under 500,000</td> <td>625.00</td> </tr> <tr> <td>500,000 and over</td> <td>1,250.00</td> </tr> </table>	0 but under 10,000	\$ 45.00	10,000 but under 20,000	75.00	20,000 but under 50,000	215.00	50,000 but under 100,000	280.00	100,000 but under 250,000	420.00	250,000 but under 500,000	625.00	500,000 and over	1,250.00	2402
0 but under 10,000	\$ 45.00															
10,000 but under 20,000	75.00															
20,000 but under 50,000	215.00															
50,000 but under 100,000	280.00															
100,000 but under 250,000	420.00															
250,000 but under 500,000	625.00															
500,000 and over	1,250.00															

COMMENTS AND COURT NOTES		Form Number	SCPA/EPTL§ or Rule #
When Permitted	Whenever a non-domiciliary decedent leaves real and/or personal property which needs to be administered under NYS law and there has been probate in the foreign jurisdiction.		1602
Forms Always Required	<ul style="list-style-type: none"> •Petition for Ancillary Probate •Exemplified/Authenticated Record of Foreign Proceeding (Will, Order Appointing, Letters of Appointment) •Citation (or waiver and consent from tax department) 	AP-1 AP-2	1609 1614 CPLR 4540 1609
Forms or Documents Sometimes Required	<ul style="list-style-type: none"> •Certified Death Certificate •Notice of Ancillary Probate with Affidavit of Mailing •Renunciation of Nominated Executor •Self-addressed stamped envelope •Bond 	AP-3 P-10	1608(5) 801(c)(ii)
<p>Proofs of Service of Citation must be filed with the Court at least two (2) working days before the return date.</p> <p>Letters will not be delivered until Notice of Ancillary Probate and Affidavit of Mailing are filed if applicable.</p> <p>Documents signed by Power of Attorney (Provide certified copy of POA and comply with Section 13-2.3 EPTL and 207.48 Uniform Rules).</p> <p>Check to be certain all documents are properly acknowledged.</p>			

THIS MATERIAL IS PROVIDED FOR INFORMATIONAL/TRAINING PURPOSES ONLY. – It is intended for use in conjunction with review of the applicable statutes and rules of the Surrogate’s Court and the Surrogate’s Court Operations Manual.