

GUIDELINES *for*
ADMINISTRATION
of
DECEDENTS' ESTATES

Connecticut Probate Courts
Probate Court Administration
186 Newington Road
West Hartford, CT 06110
Telephone: (860) 231-2442
Fax: (860) 231-1055
jud.ct.gov/probate

ATTENTION

All Estates Must File an Estate Tax Return in the Probate Court

An **Estate Tax Return** must be filed within **six (6) months of death**.

Probate charges are calculated on the value of the estate of a decedent, whether or not the estate is administered in a probate court.

Interest accrues on unpaid probate charges:

- 1) If a bill from a probate court is not paid within 30 days, or
- 2) If an estate tax return is not filed within six (6) months of the date of death.

*See **Step 7** for more details.*

Please contact your local probate court for more information.

Notes: 1)As used in this booklet, words referring to the masculine gender may be applied to females, and words referring to the feminine gender may be applied to males. 2) A number of estate applications and other estate-related probate forms are available online at the Judicial Branch's website, jud.ct.gov. (Click on “Forms” under “Quick Links.”) Forms are also available at the probate court.

INTRODUCTION

The responsibility for settling the affairs of a decedent often falls upon a family member or friend. We have prepared this booklet to answer some questions about probate court procedures that are often asked during the settlement of a decedent's estate.

Since many of the estates handled in the probate courts deal with complex statutes and tax laws, it is important for each person to seek competent professional advice when faced with these problems. This booklet should not be considered as a substitute for that advice but rather as a guide to the fiduciary's responsibilities.

WHY DO PROBATE COURTS BECOME INVOLVED IN THE SETTLEMENT OF DECEDENTS' ESTATES?

When a person who owns property dies, the probate court becomes involved to oversee the division of his property among those legally entitled to it. This division of property will be carried out according to the person's wishes if he had made them known by executing a will. If the person, referred to as a "decedent," left no will, the property will be divided according to certain laws known as the laws of "intestacy." In addition to overseeing the distribution of the estate, the probate court will ensure that any debts of the decedent, funeral expenses, and taxes are paid prior to distributing the remaining assets of the estate.

HOW DO PROBATE COURTS BECOME INVOLVED IN THE SETTLEMENT OF DECEDENTS' ESTATES?

A decedent who left a will is known as a "testator." Within 30 days of the testator's death, the will must be brought to the probate court in the district in which he or she had last permanently resided. This is usually the responsibility of the "executor," a person named in the testator's will to carry out the terms of the will. Any other person who has knowledge of, or possession of, a will for the testator must deliver the will either to the

executor or to the probate court within 30 days of the testator's death. There is a criminal penalty for failure to do so.

In addition to a will, there may be additions or amendments to the will that are known as “codicils.” A codicil is the only legal document that can add to, delete, or modify provisions of a will. Any codicils must also be delivered to the probate court within 30 days of the testator's death. Before the provisions of a will are carried out, the will must be “probated” or “proved” in the probate court in a proceeding to determine the will's validity as a legal document. The court approves the appointment of the executor named in the will as part of this process.

In the case of a person who dies “intestate,” having left no will, an application for appointment of an administrator to handle the decedent's affairs and property must be filed in the probate court in the district in which the decedent had her permanent residence at the time of death. This is usually done by the decedent's surviving spouse, an adult child, or other relative. The court will appoint an administrator who will have the same duties as an executor named in a will. The law favors the appointment of close relatives, such as the spouse or a child. Both the administrator and the executor are referred to as the “fiduciary,” a term used to denote a person (or persons) who holds a position of trust involving the handling of the property of another.

WHAT ARE THE RESPONSIBILITIES OF A FIDUCIARY IN THE HANDLING OF A DECEDENT’S ESTATE?

The fiduciary's responsibilities in the handling of a decedent's estate include managing all transactions in a careful manner, ensuring the preservation of the estate's assets, and expediting the final settlement of the estate. The fiduciary is expected to be fair and impartial in all dealings with creditors and beneficiaries. The fiduciary has the responsibility for filing all necessary documents in connection with the administration of the estate in the probate court. A step-by-step list of responsibilities is contained within this pamphlet.

WHEN SHOULD A FIDUCIARY SEEK PROFESSIONAL ASSISTANCE?

While the probate court may assist a fiduciary in administering an estate, it is often advisable for the fiduciary to engage professional assistance. For example, professional assistance may be necessary when the estate to be managed involves substantial or unusual assets or if the estate is large enough to involve the filing of a Federal Estate Tax Return. Forms that need to be filed in the probate court are available from the court, and instructions for their completion are often included on the forms.

IS THERE A SIMPLIFIED PROCEDURE FOR SETTling SMALL ESTATES WITH LIMITED TYPES OF ASSETS?

A simplified procedure for settling the estate may be available if the total value of the estate assets does not exceed \$40,000. In addition, at the time of death the decedent must not own any real estate other than survivorship property, and the estate assets must consist only of personal property and/or an unreleased interest in a mortgage with or without value. This simplified procedure may be used even though survivorship property passed to a survivor as a result of the death of the decedent.

In such a case it is not usually necessary to apply for the appointment of an administrator or admission of the will for probate. If the claims against the estate equal or exceed the assets, no distribution will be necessary. In the event that there are excess assets after the payment of debts and expenses, and either no will is found or the will's terms are not inconsistent with the laws of intestate succession, then the court shall order distribution in accordance with the laws of intestacy without admitting the will to probate.

If, however, there is a will that provides for a distribution that is not consistent with the laws of intestate succession, then the court shall order a distribution in accordance with the terms of the will only if the decedent's heirs-at-law sign a written waiver of their right to contest the will. In the alternative, the court will order a distribution in accordance with the laws of intestacy if the beneficiaries named in the will consent in writing to such a

distribution. If neither the heirs sign a waiver of their rights, nor the beneficiaries consent to an intestate distribution, the small estates procedure will not be available to settle the estate, and the will must be offered for probate.

When the small estates procedure is appropriate, the decedent's spouse, if any, or if none, any of the decedent's next of kin, or if there is no next of kin or if the surviving spouse or next of kin refuses, then any suitable person whom the court deems to have sufficient interest may file an affidavit with the probate court certifying to the payment of all the decedent's debts, at least to the extent of the fair market value of all of the assets, and submit the will for filing only. The affidavit must also state whether or not the decedent had been receiving aid or care from the state. In addition to the affidavit, form CT-706 NT, Connecticut Estate Tax Return, must be filed. Please see Step 7.

The steps given below in bold print outline the major responsibilities of the fiduciary in settling a decedent's estate and include time limitations in which to carry out the functions. The narrative following each step provides a more comprehensive description of the process, including the responsibilities of all parties involved. It should be noted that this outline of steps is not designed to be all-inclusive for every situation. There may be additional responsibilities for fiduciaries of certain estates, depending on individual circumstances.

STEP 1: FILE WILL AND APPLICATION FOR PROBATE OF WILL OR APPOINTMENT OF ADMINISTRATOR, PC-200, WITHIN 30 DAYS OF THE DECEDENT'S DEATH.

An application for administration or probate of will and the will (if there is one) are submitted to the probate court within 30 days of the decedent's death. The application must contain the names and addresses of all heirs (the decedent's closest relatives) and beneficiaries (those parties who would inherit under the will). A copy of the decedent's death certificate may be required by the court. There are two options for the probate court hearing:

1. If all those entitled to notice waive their right to notice or do not request a formal hearing, **and** the court does not believe a hearing is necessary, then the court will enter a decree on the decree entry date without a formal hearing and without the parties being present.

2. If the matter is contested, if any interested party requests a formal hearing, or if the court determines that a formal hearing is necessary, the court will schedule a formal hearing. All parties will receive notice of the hearing.

If the will is determined to be valid, the executor named therein is normally appointed. In an intestate estate, an administrator is appointed. Any executor or administrator may be removed from this position by the court for cause shown. The court will appoint a guardian ad litem to protect the interest of any heir or beneficiary who is a minor or incompetent. If the will excuses bond, no bond will be required of the executor unless the probate court decides that there is sufficient reason to require one. All administrators must be bonded, with the amount being established by the court.

Please note the following exception to these bonding requirements. A probate judge may waive the requirement of a probate bond in a testate or intestate estate if the assets of the estate are less than \$20,000, or if the amount of the estate that is not restricted by probate court order is less than \$10,000.

STEP 2: TAKE POSSESSION OF THE DECEDENT'S PROPERTY.

The first responsibility of the fiduciary, following appointment by the court, is to gather together the assets of the estate and place them under his control. For example, a bank account should be transferred from the decedent's name into an estate account. Stock certificates need not be registered in the name of the estate, although the transfer agents should be notified to send dividends in care of the fiduciary. Utility companies that have billed the decedent need to be notified of the decedent's death, and accounts to remain open should be transferred to the estate's account. The fiduciary must take care to keep the estate's income and expenses separate

from his own. Any dwellings, seasonal homes, etc. should be secured and protected from the elements.

STEP 3: IF THE DECEDENT OWNED REAL ESTATE, FILE NOTICE FOR LAND RECORDS/APPOINTMENT OF FIDUCIARY, PC-251, WITHIN TWO MONTHS OF APPOINTMENT OF FIDUCIARY.

A Notice for Land Records/Appointment of Fiduciary must be filed with the town clerk in each town in Connecticut where real estate belonging to the decedent is located.

STEP 4: FILE INVENTORY, PC-440, WITHIN TWO MONTHS OF APPOINTMENT AS FIDUCIARY.

The fiduciary must file an inventory of the estate with the probate court within two months of appointment as fiduciary. In general, the inventory should list only property the decedent owned in her own name. However, it should also list life insurance policies payable to the decedent's estate, any partnership property, and any property owned with other persons not in survivorship. All property must be valued on the inventory at its fair market value at the time of death. It is the responsibility of the fiduciary to determine these values through inquiry and her own experience. Real estate should be described as it appears in the most recent deed, and a copy of the deed may be attached to the inventory. The amount of any mortgage(s) owed on real estate and the name of the person or corporation to whom the debt is owed must be included. Itemized lists of valuable personal property such as jewelry and antiques should also be included. Ordinarily, household effects and personal items need not be itemized, unless of particular value. They can be grouped together in categories unless an article is specifically bequeathed in the will.

STEP 5: OBTAIN CASH FOR ESTATE ADMINISTRATION AS NEEDED.

The fiduciary should anticipate the cash needs of the estate to pay for administration expenses, taxes, claims, and bequests. He or she has the authority to convert into cash any personal property not specifically bequeathed but must obtain permission from the probate court to sell, mortgage, or otherwise convey real estate, unless specifically authorized to do so under the terms of the will. When personal property is to be sold, the fiduciary (if the fiduciary is not named in the will as executor or is not a family member) must send a copy of the inventory to all interested parties, with a notice of intent to sell. They then have the right to object to the sale within five (5) days of the receipt of the notice. (The court may waive this requirement if an expeditious sale is necessary.) A hearing will be held to determine the advisability of the requested sale. If parties interested in the estate do not want certain assets sold, cash may be advanced to the estate to pay estate obligations.

The surviving spouse or other dependent family members may apply to the probate court for a support allowance from the estate funds during the period of settlement of the estate. The fiduciary must sign the Application and Decree for Support Allowance, PC-202, indicating that she has no objection.

The surviving spouse or family of the decedent may be allowed to use the decedent's automobile while the estate is being settled, provided the decedent maintained the automobile as a family car. Permission to use the vehicle can generally be obtained from the court by simply writing or calling the court. The fiduciary need not register the automobile until the expiration of the registration that was in force at the time of the decedent's death. (Note: Under the provisions of C.G.S. §14-16, the owner of a motor vehicle can designate a beneficiary on the registration certificate in writing. In order to obtain ownership of the vehicle after the owner's death, the beneficiary must make application to the Department of Motor Vehicles within 60 days of the date of death.)

STEP 6: FOLLOW STATUTORY PROCEDURES FOR THE PAYMENT OF CLAIMS AGAINST THE ESTATE, AND FILE RETURN OF CLAIMS AND LIST OF NOTIFIED CREDITORS, PC-237, AT REQUIRED TIME.

The statutes relating to payment of claims against estates of decedents dying are summarized in this section.

Within 14 days after the first fiduciary's appointment, a newspaper notice will be placed by the probate court notifying the estate's creditors of the decedent's death, the creditors' obligations to present claims promptly, the fiduciary's name, and the address where claims are to be presented. "Claims" include all debts incurred by the decedent prior to his death. The statutes provide that the fiduciary may send certified mail notice to creditors informing them that claims must be presented to the fiduciary within 90 days of the date of the notice, but the fiduciary is under no obligation to send notice to creditors. Creditors who do not receive certified notice have 150 days to present their claims to the fiduciary. The statutes permit creditors to ask the probate court for an extension of time to present claims in appropriate circumstances.

It is the responsibility of the fiduciary to determine the validity of any claim and notify the creditor of any claims he feels are not proper, in whole or in part. If there is doubt regarding the validity of a claim, court assistance should be sought. One hundred and fifty days after the appointment of the fiduciary, a good faith fiduciary who has distributed estate assets will not be liable to the creditors of the estate. Beneficiaries may be liable for legitimate claims properly brought after final distribution of all those assets known to the fiduciary. Within 60 days after the 150-day period, the fiduciary must file with the court a Return of Claims and List of Notified Creditors, PC-237, sworn to by the fiduciary.

Any expenses related to the decedent's death and the settlement of the estate are known as "administration expenses." They include the funeral expenses, statutory probate court charges, legal fees, the fiduciary's fees, the cost of legal notices, and any expenses related to maintenance of the

decedent's property incurred after the decedent's death. Certain expenses may take precedence over the claims of general creditors incurred before the decedent's death. Therefore, no claims from any creditor may be paid until it is determined that the assets of the estate are sufficient to cover the preferred expenses (taxes, funeral bills, expenses of last illness, etc.) and all claims of creditors. If the assets of the estate are not sufficient to cover the funeral expenses and expenses of the last illness of a married person, his spouse may be responsible for the payment of these expenses.

If the assets of the estate are not adequate to pay the debts, the estate may be settled as insolvent. The determination of whether an estate is insolvent will be made at a hearing held by the probate court following notice arranged by the fiduciary at the court's direction. The procedure for settling an insolvent estate is substantially different from that for a solvent estate, and competent legal advice should be obtained.

STEP 7: FILE TAX RETURNS AND PAY APPLICABLE TAXES AND FEES FOLLOWING THE DECEDENT'S DEATH.

A. Estates of Decedents Dying: 1) January 1, 2005 through December 31, 2009 AND 2) on or after January 1, 2011. For estates of decedents dying January 1, 2005 through December 31, 2010 **AND** on or after January 1, 2011, the Connecticut Estate and Gift Tax will apply to Connecticut taxable estates of more than two million dollars. This includes Connecticut taxable gifts made on or after January 1, 2005. However, estate tax returns are required for all estates, regardless of value.

Taxable estates valued at more than \$2,000,000. For Connecticut taxable estates of more than two million dollars, the fiduciary must file an original Connecticut Estate and Gift Tax Return, Form CT-706/709, with the Commissioner of Revenue Services and a copy with the probate court for the district in which the decedent resided on the date of death, **OR**, if the decedent died a nonresident of Connecticut, with the probate district where the decedent's real property or tangible personal property was located within Connecticut. The filing deadline for decedents whose date of death is before July 1, 2009 is nine months from the date of death, and interest and penalties

will accrue from that date. ***For decedents whose date of death is on or after July 1, 2009, the filing deadline is six months from the date of death.***

The fiduciary must send any tax due directly to the Department of Revenue Services with a cover letter referencing the name of the estate. The Department of Revenue Services will review the Form CT-706/709 and issue its tax assessment accordingly. Forms CT-706/709 and CT-706 NT (discussed below) are available at each of Connecticut's probate courts. Any further inquiries about the Connecticut Estate and Gift Tax should be directed to the Department of Revenue Services, 25 Sigourney St., Hartford, CT 06106.

Taxable estates valued at \$2,000,000 or less. The procedure is different for Connecticut taxable estates of two million dollars or less. The fiduciary must file Form CT-706 NT, Connecticut Estate Tax Return (For Nontaxable Estates), only with the probate court. If the judge of probate believes that the estate is not subject to tax based on this return, the judge shall issue a written opinion setting forth the reasons for such judge's opinion. The filing deadline for decedents whose date of death is before July 1, 2009 is nine months from the date of death. ***For decedents whose date of death is on or after July 1, 2009, the filing deadline is six months from the date of death.***

B. Estates of Decedents Dying in 2010. For estates of decedents dying in 2010, the Connecticut Estate and Gift Tax will apply to Connecticut taxable estates of more than 3.5 million dollars. This includes Connecticut taxable gifts made on or after January 1, 2005. However, estate tax returns are required for all estates, regardless of value.

Taxable estates valued at more than \$3,500,000. For Connecticut taxable estates of more than 3.5 million dollars, the fiduciary must file an original Connecticut Estate and Gift Tax Return, Form CT-706/709, with the Commissioner of Revenue Services and a copy with the probate court for the district in which the decedent resided on the date of death, OR, if the decedent died a nonresident of Connecticut, with the probate district where the decedent's real property or tangible personal property was located within Connecticut. **The filing deadline is six months from the date of death, and interest and penalties will accrue from that date.**

The fiduciary must send any tax due directly to the Department of Revenue Services with a cover letter referencing the name of the estate. The Department of Revenue Services will review the Form CT-706/709 and issue its tax assessment accordingly. Forms CT-706/709 and CT-706 NT (discussed below) are available at each of Connecticut's probate courts. Any further inquiries about the Connecticut Estate and Gift Tax should be directed to the Department of Revenue Services, 25 Sigourney St., Hartford, CT 06106.

Taxable estates valued at \$3,500,000 or less. The procedure is different for Connecticut taxable estates of 3.5 million dollars or less. The fiduciary must file Form CT-706 NT, Connecticut Estate Tax Return (For Nontaxable Estates), only with the probate court. If the judge of probate believes that the estate is not subject to tax based on this return, the judge shall issue a written opinion setting forth the reasons for such judge's opinion. **The filing deadline is six months from the date of death.**

C. Estates of Decedents Who Died Before January 1, 2005. For those decedents who died before January 1, 2005, the fiduciary must file a Connecticut Succession Tax Return (form S-1 or S-2) with the probate court. After reviewing the form, the court will forward it to the Commissioner of Revenue Services. There may also be a Connecticut Estate Tax due for certain cases where the filing of a Federal Estate Tax Return is required. Please contact the Department of Revenue Services at (860) 297-5962 for forms and further information.

The filing of a U.S. Treasury Department Federal Estate Tax Return (Form 706) may be required if the total value of the estate's assets exceeds a certain amount, as specified in the Internal Revenue Code. To obtain the most current information concerning the Federal Estate Tax, the fiduciary should contact the Internal Revenue Service.

It is the fiduciary's responsibility to file both a federal and Connecticut Individual Income Tax Return (federal form 1040 and CT-1040) for the decedent for the tax year in which the decedent died, and to pay any state income tax that may be due. The fiduciary should determine whether a

federal tax identification number is required for the estate. The fiduciary may also be required to file a Fiduciary Income Tax form (federal form 1041). If form 1041 must be filed, the fiduciary may be required to file form CT-1041, Connecticut Income Tax Return for Trusts and Estates. Please contact the Department of Revenue Services for further information.

D. IMPORTANT NOTICE ABOUT PROBATE COURT FEES: Interest Is Applied for the Late Payment of Fees or the Nonpayment of Fees.

Effective January 1, 2011, if an invoice for probate court fees is not paid within 30 days of the invoice date, an interest rate of 0.5% per month (or portion thereof) will be applied to the unpaid balance.

A similar situation arises when estate tax returns are not filed. As noted above, estate tax returns are required for all estates, regardless of value. The failure to file an estate tax return or a copy of an estate tax return by the due date or expiration date of any extension will result in interest being applied. The fees that would have been due if the return had been filed will bear interest at 0.5% per month or portion thereof from 30 days after the due date until the fees are paid.

Note 1): The interest requirements for unpaid invoices or unfiled estate returns do not apply if the basis for costs for the estate does not exceed \$40,000 or if the basis for costs does not exceed \$500,000 and any portion of the property included in the basis for costs passes to the surviving spouse.

Note 2): The probate court may extend the time for payment of fees, including interest, if the court believes that requiring such payment by the due date or expiration date would cause undue hardship. No additional interest shall accrue during the extension period, and the probate court may not waive interest outside of any extension period.

STEP 8: FILE FINAL ACCOUNT, USUALLY WITHIN 12 MONTHS OF THE DECEDENT'S DEATH.

Except under certain circumstances described in the next paragraph, the fiduciary must file a final account, called an Administration Account, PC-241 or PC-242, or other form acceptable to the court, when all debts, expenses, and taxes have been paid. Usually this is done within 12 months of the death of the decedent. This account informs the court and the beneficiaries of all property and income received and all expenses paid during the settlement of the estate. The balance of receipts over expenses will be the amount remaining for distribution. The probate court will hold a hearing on the account to allow the beneficiaries or any other interested party to ask questions about, or object to, the proposed distribution or the manner in which estate funds were used. **If all parties interested in the estate** sign an Acceptance and Waiver Re: Final Account, PC-245, indicating that they have received and reviewed a copy of the final account and waive their right to a hearing, the court may waive the formal hearing and act on the account without the parties having to appear.

The filing of an administration account may not be necessary if: a) no beneficiary is a trustee of a testamentary or intervivos trust, b) any fiduciary is one of the beneficiaries of the residue of the estate, **and** c) if all other dispositions to other beneficiaries are specific bequests or devises. The fiduciary may then file a Statement in Lieu of Account, PC-243, in which the fiduciary does the following: a) states under oath that all debts, funeral expenses, taxes, and expenses of administration have been paid; b) lists the total of any amount reported on the return of claims filed; c) lists the total amount inventoried in the estate; d) indicates that specific bequests have been or will be paid in full; e) states that all distributees have received a copy of the statement in lieu of account; and f) itemizes all funeral expenses, taxes, and expenses of administration. **If all parties interested in the estate** sign an Acceptance and Waiver Re: Statement in Lieu of Account, PC-244, indicating that they have received and reviewed a copy of the Statement in Lieu of Account and waive their right to a hearing, this statement may be sufficient for the court to discharge the fiduciary from further responsibility and notify the surety company to terminate the probate bond. The court may

then waive a formal hearing and act on the account without the parties having to appear.

STEP 9: DISTRIBUTE ASSETS TO BENEFICIARIES.

When the final account has been approved, the court will order the fiduciary to distribute the assets of the estate. The fiduciary then distributes the property to the beneficiaries according to the approved distribution.

STEP 10: FILE CLOSING STATEMENT, PC-213.

For all practical purposes, the fiduciary's final act as fiduciary is the filing of an affidavit of closing with the court. If a probate bond has been required, the court will send the surety company a certificate stating that the fiduciary has complied with all orders of the court relating to the settlement of the estate and terminating the probate bond.

APPEALS FROM PROBATE – C.G.S. §§45a -186 – 193

Any person aggrieved by an order, denial, or decree of the probate court may appeal to the superior court. In general, appeals must be taken within 30 days of the date of the order, denial, or decree.

Glossary

PROBATE – Broadly, a characterization of the functions of the probate court, whether it be the probate of a will, the approval of the accounts of an administrator of a decedent’s estate, or any other judicial act within the province of the court, including guardianships, conservatorships, and the like.

WILL – A written declaration of a person’s wishes concerning the distribution of property standing in his or her name after death, executed in accordance with specific legal procedures.

CODICIL – An amendment or addition to a will.

TESTATE – Referring to the estate of a deceased person who leaves a will at death.

INTESTATE – Referring to the estate of a deceased person who dies without leaving a will.

FIDUCIARY – One who holds property in a position of trust for another, such as an executor, administrator, trustee, guardian, or conservator.

EXECUTOR – A person named in a will to manage and settle an estate and to carry out the directions and mandates of the decedent.

ADMINISTRATOR – A person who has been named by the probate court to administer and settle the estate of a decedent who dies without leaving a will. The estate will be settled in accordance with the laws of descent and distribution, which are also known as the laws of intestacy.

TRUST – Property, real or personal, held by one party for the benefit of another.

GUARDIAN – A person given the power and duty by a probate court to manage the property or provide for the care of the person of a minor child or person with intellectual disability.

CONSERVATOR – A person named by the probate court to supervise the affairs of another person who is incapable or who needs assistance in managing his or her affairs or caring for himself or herself.

PROBATE BOND – A promise by a fiduciary, usually guaranteed by a third party known as a surety, to replace any funds up to the amount of the bond to fulfill the faithful performance of his or her duties. Often, the surety is an insurance company.

REAL PROPERTY – Real estate such as a home, land, or farm, including the ownership of a condominium unit.

PERSONAL PROPERTY – Property not classified as real property, such as bank accounts, shares of corporate stock, bonds, automobiles, household furnishings and personal effects.

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