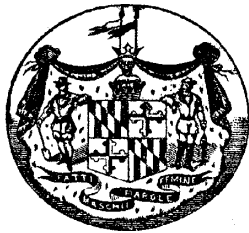


ADMINISTRATION  
OF  
SMALL ESTATES

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ADMINISTRATION  
OF  
SMALL ESTATES

Research Report No. 22

Submitted August, 1944

By

Carl N. Everstine,  
Research Assistant

Research Division  
Legislative Council of Maryland  
City Hall, Baltimore 2

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## PREFACE

A Resolution was adopted by the House of Delegates on March 25, 1943, requesting the Legislative Council to study and make recommendations with respect to the elimination of expense and time in administering small estates of decedents.

At the direction of the Council, the Research Division has made a study of the laws of other states on this subject and an analysis of the estates administered in Maryland, showing the number of small estates involved and the approximate cost of administration. The Registers of Wills of Baltimore City and of the several counties have cooperated in furnishing information used in making this study. For such information and for other assistance, we are indebted to Joseph O'C. McCusker, Chief Deputy Comptroller; W. Lee Elgin, Commissioner of Motor Vehicles; Judge Philip L. Sykes, Chief Judge, Baltimore City Orphans' Court; John H. Bouse, Register of Wills, Baltimore City; Joseph P. Connor, Baltimore County; Raymond L. Pickett, Howard County; R. Glenn Prout, Anne Arundel County; and all other registers of wills.

HORACE E. FLACK

Director, Research Division

City Hall, Baltimore 2

August 3, 1944

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The estate of every person who dies leaving a will, and that of every person who dies intestate while "seised and possessed" of property, is in Maryland required to pass through the probate proceedings of the Orphans' Court and the Register of Wills. In some instances, of course, an estate consists of only a small amount of property, and a House Resolution in 1943, sponsored by Delegate John M. Weber (1st District, Baltimore City), asked for an inquiry into possibilities for "a more direct and less expensive way" of administering small estates. As the resolution went on to point out, such an inquiry "involves questions of protecting the State and creditors of the deceased as well as the heirs themselves...."

Maryland has already dispensed with the requirement for administration if the decedent's only asset is life insurance not exceeding \$150., or if his only asset is an automobile with a valuation not exceeding \$300. Any proposal for making possible a quicker and cheaper administration of small estates than at present would involve either an extension of this principle to other classes of property or a simplified and summary method for administration.

As a working definition of what constitutes a "small" estate, an upper limit of \$500. has been adopted. This figure is perhaps about the average among the other states which have made concessions to small estates, and it has been a convenient one for testing the effects of any change from the present law.

### A. Expense of Administration

Most of the items of expense for the administration of an estate are regulated by statute, though the particular items which may be charged against any one estate depend upon its individual requirements.

The fees of the Register of Wills are listed in Article 36, Section 2 of the Annotated Code (1943 Supplement). They include, for example, \$5.10 for taking probate and granting letters testamentary, \$2.50 for entering upon the Estate Docket, 50 cents for filing each renunciation, \$1.00 for an order to sell, \$2.00 for a report of sale, \$1.00 per page for copies of any paper of record, etc.

The Register of Wills also is charged with the collection of taxes due the State. First, he collects a tax of 1% of the estate, levied against the commissions paid to the administrator (Art. 81, Sec. 104); and secondly, he collects the State's inheritance tax, at the rate of 1% on direct heirs and  $7\frac{1}{2}\%$  on collateral heirs, each one of whom gets a blanket exemption of \$150. (Art. 81, Secs. 109-112).

Most estates also are subject to expenses incurred in meeting certain statutory requirements. Thus, the administrator must give a satisfactory bond (Art. 93, Sec. 52), and while a few are able to give a personal bond, many of them must purchase it, at a usual cost (for small estates) of \$10. A notice to creditors also is considered necessary for many estates (Art. 93, Sec. 116), at a customary charge of \$7 in Baltimore City and lesser amounts in the counties.

Every administrator is allowed by the Orphans' Court a commission of from 2% to 10% of the estate, up to \$20,000., after which the percentage is smaller (Art. 93, Sec. 5). Generally, for small estates, the amount

allowed the administrator is the full 10% commission, which in turn is taxed as mentioned above.

These comprise the several main classes of fees and possible charges against the estate. They do not include, of course, the allowance of \$150. for a widow with a child (Art. 93, Secs. 321, 322). Also, they do not include whatever claims of creditors may be filed against the estate. Of this latter group, the undertaker is in a preferred position, for any amount up to \$300. Other creditors, in descending order of priority, include taxes due by the decedent, medical expenses up to \$100., rent for not more than three months, certain wages due to employees of the decedent, and other "just" claims (Art. 93, Sec. 5).

In order to get some approximation of the amounts of these various fees and charges in actual cases, fifty administration accounts have been taken from the records of the Register of Wills of Baltimore City. They all concern estates of not more than \$500. and were taken in order from Administration Accounts Liber JHB 384 and Liber JHB 385, twenty-five accounts being from each book. All these accounts were filed during the latter half of 1943, after the new schedule of fees, as amended in 1943, had become effective. These figures are shown in Tables 1 and 2.

Among these fifty accounts, total fees of the Register of Wills varied from \$6.10 to \$26 75, with an average of \$12.68. State taxes collected by the Register of Wills were usually low, being in most instances only the tax on the administrator's commissions; this tax amounts to 1% of the body of the estate and therefore can easily be identified in the tables. Only infrequently, among these small estates, did any heir of the decedent receive enough (i.e., over \$150.) to be required to pay an inher-

Table 1. Distribution of Twenty-five Small Estates, from Liber JHB 384, Baltimore City Register of Wills Office, 1943.

Inventory- Amount & Source	Fees of Register	Taxes	Publication, Bond, etc.	Administrator's Commissions	Funeral Expense	Other Creditors	Net Balance Distributed.
\$200.00 - Sale	\$13.55	\$ 2.00	\$14.50	Waived	\$300.00	\$ 58.15	\$188.20*
493.10 - Misc.	14.80	4.93	10.00	\$29.59	300.00	--	133.78
434.05 - ?	14.05	29.58	10.00	39.06	--	--	341.36
392.97 - Cash	12.60	7.53	17.00	Waived	--	--	355.84
325.00 - Car	12.10	3.25	10.00	29.25**	195.40	--	75.00
126.80 - B. & L.	16.10	1.27	17.00	Waived	300.00	--	207.57*
350.00 - ?	11.60	3.50	10.00	Waived	300.00	40.00	15.10*
169.00 - Pers.	15.45	1.69	17.25	Waived	300.00	10.00	175.39*
310.00 - Stock	13.40	3.10	10.00	Waived	--	--	283.50
43.94 - Wages	6.10	.44	--	Waived	37.40	--	--
140.00 - Car.	11.60	1.40	10.00	Waived	300.00	--	183.00*
200.00 - Sales	14.40	2.00	18.00	Waived	300.00	2.82	137.22*
436.11 - Ins.	7.60	4.36	10.00	17.44**	300.00	--	96.71
336.68 - Wages	6.10	3.37	--	Waived	252.21	--	75.00
321.45 - Misc.	18.45	4.99	27.00	Waived	--	20.00	251.01
251.35 - Cash	9.75	4.50	17.00	22.62	--	--	197.48
400.00 - Sale	17.40	4.00	10.00	36.00	--	2.82	329.78
416.00 - Stock	13.60	4.34	17.00	37.44	300.00	25.00	18.62
150.00 - Ins.	6.60	1.50	10.00	Waived	300.00	348.00	516.10*
344.88 - ?	8.70	3.45	10.00	31.04**	--	--	291.69
145.00 - Pers.	18.60	1.45	7.00	Waived	300.00	475.51	657.56*
200.00 - Pers.	6.60	2.00	--	18.00	188.00	--	14.60*
142.57 - Wages	8.60	1.43	10.00	Waived	122.54	--	--
152.00 - Bank	9.10	1.52	10.00	13.73	--	117.65	--
338.07 - Misc.	18.25	3.38	24.00	30.43	536.50	519.82	794.31*

\*Indicates deficiency  
\*\*Widow/Widower

Table 2. Distribution of Twenty-five Small Estates, from Liber JHB 385, Baltimore City Register of Wills Office, 1943.

Inventry -- Amount & Source	Fees of Register	Taxes	Publication, Bond, etc.	Administrator's Commissions	Funeral Expense	Other Creditors	Net Balance Distributed
\$151.24 - ?	\$20.30	\$1.51	\$27.00	Waived		\$215.00	\$112.57*
455.56 - Bank	7.20	7.52		Waived		--	440.84
319.68 - Wages	9.10	5.87	10.00	\$28.77		1.80	264.14
171.10 - Coll'n.	18.74	1.71	28.44	15.40		106.81	--
300.00 - Car	13.10	3.00	10.00	Waived	273.90	--	--
375.00 - ?	13.60	3.75	--	33.75	248.90	--	75.00
102.50 - Ins.	7.70	1.03	8.00	9.22		85.00	8.45*
359.00 - ?	14.15	3.59	10.50	32.31	300.00	--	1.55*
225.00 - Sale	14.10	2.25	10.00	Waived	123.65	--	75.00
424.30 - Cash	7.60	4.25	10.00	Waived	287.00	--	115.45
287.50 - Stock	15.10	2.88	10.25	Waived	294.95	--	35.68*
466.55 - Bank	10.60	4.66	10.00	42.00	200.00	--	199.29
220.00 - Pers.	18.05	2.20	27.60	19.80	144.00	75.00	66.65*
417.55 - Cash	7.20	4.18	17.00	Waived	300.00	--	89.17
483.00 - Cash	8.40	4.83	24.00	43.47	300.00	113.00	10.70*
321.05 - Sale	24.55	3.21	7.25	Waived	286.04	--	--
297.60 - Bank	19.10	2.98	10.00	26.78		--	238.74
127.94 - Cash	10.60	1.28	10.00	11.51		--	94.55
459.99 - Cash	10.10	4.60	10.00	41.40	300.00	31.98	61.91
275.00 - ?	11.10	2.75	10.00	Waived	176.15	--	75.00
500.00 - ?	12.60	5.00	10.00	Waived	300.00	--	172.40
429.77 - ?	8.10	4.30	10.00	38.68	293.69	--	75.00
107.50 - Sale	26.75	1.56	19.00	9.67		2.78	47.74
200.00 - Coll'n.	9.55	2.00	17.00	Waived	171.45	--	--
500.00 - Pers.	18.70	5.00	10.00	Waived		--	466.30

\*Indicates deficiency.

itance tax. In one instance, the Register collected a total of \$29.58 in taxes from an estate of \$434.05, but this unusually large amount was the result of a payment of inheritance tax at the collateral rate of  $7\frac{1}{2}\%$ . Among all fifty accounts, the Register of Wills collected for these two forms of State taxation only an average total of \$3.74 each.

The cost of a bond, publication of notice to creditors, and notary fees ranged from zero to \$28.44, with an average among all the accounts of \$12.24.

Administrator's commissions were waived in just about half of these fifty accounts. The reason, of course, lies in the fact that the administrator, being also an heir, simply elected to receive whatever was coming to him in the latter capacity. Whenever an administrator elected to take his commissions and could be identified as a close relation of the decedent, that fact has been noted on the tables.

Funeral expenses were charged against the estate in about two-thirds of all the cases, and very often it was for the full statutory amount of \$300., the payment of any greater amount requiring special approval of the Orphans' Court. About one-third of the decedents had other creditors, in varying numbers and amounts. Also, about one-third of the accounts required a cash advance from the administrator in order to balance.

The claims of creditors need have no further mention, since the number and amount of them cannot be limited by legislation. Among possibilities for reducing the cost of administering small estates, then, there remain those charges which are directly imposed by statute, as the fees

of the Register of Wills and the State taxes, and those indirect expenses which are the result of statutory requirements or allowances, as the cost of a bond, the cost of publication of notice to creditors, and the administrator's commissions.

For the "average" estate among those studied, these expenses were as follows:

Register's fees . . . . .	\$ 12.68
State taxes . . . . .	3.74
Bond, publication, etc. . . . .	12.24
Administrator's commissions . . . . .	10%, unless waived

From this list, the amount paid in State taxes is the smallest item. In most instances, as has been said, it represents only the tax upon the administrator's commissions (whether the commissions are waived or collected). Because of the small amount involved, and because any possible change in inheritance taxes raises an entirely separate question, there is little point in further considering the item of State taxes.

Among the types of expenses listed above, therefore, there remain these three from which some reduction in the cost of administration might be attempted: (1) the fees of the Register of Wills; (2) the cost of a bond for the administrator, the expense of publication of notice to creditors, and such slight expenses as notary fees; and (3) the commissions, if any, paid to the administrator.

The fees of the Register of Wills could be reduced or even eliminated by amending the statute which prescribes them (Art. 36, sec. 28).

It would be impossible, however, to make a direct reduction in the cost of a bond or in the expense of publication, for these are commer-

cial charges. Also, it would be highly questionable to reduce these costs by the indirect expedients of permitting administrators not to secure bonds and of eliminating all provisions concerning notice to creditors. A number of other states have reduced or entirely eliminated such expenses by providing for some form of a public administrator, the work of which will be discussed in a succeeding section.

The third item of expense, commissions paid to the administrator, likewise could hardly be touched directly by a statutory reduction or elimination in the amounts allowed, for the probable result in the case of small estates would be that no one outside the family would be willing to accept the administration. Some of the states which have a public administrator have indirectly made a reduction in those charges, as will be explained.

In addition to these possibilities for reducing specific items of cost, there is the further general possibility of simply declaring administration to be unnecessary for estates under, say, \$500., as has already been done in Maryland for motor vehicles valued at not more than \$300. and for insurance policies valued at not more than \$150.

The possible workings of such methods for reducing the costs of administration are discussed in a succeeding section.

#### B. Time Required for Administration

The only statutory provision which affects the length of time required to administer an estate is that concerned with notice to creditors (Art. 93, Secs. 116, 124). It specifies that an administrator who has paid out the assets in discharging "just and legally proven claims"

shall not be liable for any claim not "legally authenticated" to him, provided that he published notice to creditors at least six months before making distribution. There is no inflexible requirement that notice be given to creditors, therefore, except that if it is not given the administrator (and his bond) may be liable to subsequent claimants.

Among the fifty small estates already shown in Tables 1 and 2, literally all combinations of time were found. Letters of administration were requested as quickly as one day following the death of the decedent, or the request may have been delayed for as long as eighteen months. Similarly, once the letters were granted, the final accounts were returned in as short a time as one or a few days and in as long a time as eighteen months or more.

The ordinary small estate can be administered with no undue delays, unless the administrator thinks it desirable to give notice to creditors. However, in most such estates the administrator is a relative of the decedent and is in a good position to know the condition of the decedent's unpaid bills, if any. In more than half the fifty estates studied, there was no notice to creditors, and hence no necessary reason for long delay.

### C. Administration Not Required

A number of states do not require administration for some forms of small estates, and Maryland itself has done the same for certain life insurance policies and motor vehicles.

1. Maryland - life insurance policies. Whenever a resident of Maryland dies leaving no assets or property other than a life insurance

policy in an amount not exceeding \$150., the insurance company may pay the amount of the policy to the person otherwise entitled thereto without the necessity for administration, provided that he supply an affidavit that such insurance policy is the only asset left by the decedent (Article 48A, Section 136).

Ordinarily, of course, a life insurance policy of any amount does not go into the decedent's estate, it being treated as the property of the beneficiary rather than of the decedent (Art. 83, Sec. 8; Art. 45, Secs. 8, 9). The provision above would come into effect, therefore, only if the decedent specifically named his estate as the beneficiary, or if the named beneficiary (other than a wife, Art. 45, Sec. 10) had died before the decedent. However, since the holders of industrial life insurance policies generally are careful to keep a living person named as beneficiary, it is only infrequently that a company pays out a policy under the provisions above.

Industrial life policies have a "facility of payment" clause which permits the companies, if receiving no claim from the stated beneficiary, to pay the amount due to any lawful beneficiary, and sometimes to the person incurring burial expenses. From the reports of company procedure which have been received, it seems that a decedent might have small policies in each of several companies, and have each policy treated as if it were his only asset.

2. Maryland - motor vehicles. In 1941 it was enacted that if a decedent's estate consists only of a motor vehicle "the retail value of which as listed in the current Red Book of the National Used Car Market

Report or a similar manual selected by the Commissioner of Motor Vehicles does not exceed \$300.," the Commissioner, upon proof satisfactory to him that all debts and taxes owed by the decedent have been paid, may transfer title to the person entitled thereto, with no administration being required (1943 Supplement, Art. 93, Sec. 243A).

The Department of Motor Vehicles receives an average of from 12 to 15 applications daily (which would total perhaps 4,000 in a year) for transfers of title under the 1941 act, about 10% of which have to be refused because the value of the car is greater than \$300. The Commissioner's office uses the retail value as cited for any particular model in the current Blue Book.

In addition to routine information about the car and the survivors, the Department requires a death certificate for the decedent, and a statement concerning the property individually owned by the decedent, his indebtedness at the time of death, whether such indebtedness has been paid, and who paid the funeral expenses. The application for transfer of title must be signed by all the heirs.

The Department reports that it never has received a complaint that debts were outstanding after a title has been transferred. In one instance a funeral director asked for a delay of a few days in the transfer of title, until his funeral bill had been paid. With this slight exception, there seems to have been no difficulty in administering the act of 1941, and the Commissioner reports that he would have no objection to having the maximum valuation increased from \$300. to \$500.

3. Real and personal property. New Jersey permits a surviving

spouse to get the decedent's real and personal property, up to a value of \$200., without administration. Kentucky allows any estate to be settled without administration if there are no debts, subject to agreement among those beneficially entitled thereto.

4. Personal property. California and Illinois allow the transfer of any kind of personal property without administration, in maximum amounts of \$1,000. and \$500. respectively.

5. Salaries and wages. Eight states (Connecticut, Delaware, Massachusetts, Mississippi, North Dakota, Utah, Virginia, Washington) permit the payment of salaries and wages due the decedent, without administration, in amounts varying from \$75. to \$500.

6. Life insurance. Five states (Connecticut, Louisiana, Maryland, New York, Tennessee) allow in one way or the other the payment of life insurance policies under conditions essentially similar to those already described in Maryland. The amounts vary from the \$150. in Maryland to \$1,000. for an industrial policy in New York.

7. Motor Vehicles. Six states (Maryland, Michigan, New York, North Carolina, Oregon, Texas) provide for the transfer of motor vehicles without administration. In four of the states the car may have a maximum value of from \$300. to \$500., while the other two states seem to allow any motor vehicle to go to the heirs by informal agreement among them.

8. Cash in bank or other money debt. Five states (Connecticut, Idaho, Louisiana, Mississippi, New York) permit the payment to survivors of certain moneys in the form of bank deposits or money debts, without administration, in varying amounts up to \$500.

9. Miscellaneous. In Massachusetts the value of shares in co-operative banks, up to \$200., may be paid to a survivor without administration. Connecticut allows an equity in shares in a building and loan association, up to \$500., similarly to be transferred. Virginia permits moneys due from the State or from the United States, when allowed for burial expenses and not exceeding \$300., to be paid to the surviving consort without administration.

#### D. Public Administrators

A majority of the states that have made concessions toward the handling of small estates have done so by making the probate procedure more simple and direct, without abolishing the requirement that there shall be some form of probate action. In a number of instances, it is true, the state statutes use language indicating that they have ended the necessity for administration, but so long as they have some action by probate authorities they have been classified for the purposes of this study as states requiring administration.

Two general plans have been adopted for making the administration of small estates simpler and more direct. The first, used by perhaps a dozen states, has been to assign duties to some public official which, in effect, seem to make him the administrator. Secondly, no fewer than eighteen states have a simplified or summary procedure for the use of any administrator, and include in some instances a reduction in fees. These two plans are discussed in this and the succeeding sections.

These states use some form of the public administrator plan:

1. Colorado. In Colorado an estate valued at \$300. or less will

be transferred or delivered to the surviving spouse or other heirs, without administration, upon application to the probate court by a creditor or other person interested in the estate. There is a docket fee in such cases of \$2.

2. Florida. Florida has perhaps the most inclusive of all state statutes which in effect set up a county official as a public administrator. A petition for order of no administration may be filed (1) when the estate is not indebted and there is a sole heir; (2) when the estate is not indebted and the heirs make an amicable division of it; (3) when the estate consists of certain homestead properties constitutionally exempt from forced sale or alienation; or (4) to enable the spouse or heirs to collect moneys in banks up to \$1,000., or to collect any debt where the debt collected plus the other personal property will not exceed \$1,000. The petition is to show the names of the heirs, the debts owed by the estate, and the amount of the estate. If the county judge (to whom the petition is to be directed) finds the facts to be correct, he is to issue an order of no administration. This statute applies to small estates up to \$1,000., and under appropriate circumstances to any estate. The fees for such administration are not to exceed \$3.50.

3. Georgia. In Georgia the ordinary (a judicial officer) in each county appoints a county administrator, who is to take charge of all estates "unrepresented and not likely to be represented." The administrator is appointed for a four-year term, and is to give bond for all his work. If there is no county administrator, the clerk of the superior court is to act as such.

The county administrator in Georgia is to have all the emoluments of administrators in general, so that the only possible saving to an estate administered by him would be the cost of a bond. However, Georgia also provides that if the estate does not exceed in value the sum exempted by law for the widow and children (one year's living expenses) the ordinary is to set it apart for them, without administration. Similarly, if the heirs and distributees prefer to settle any estate without administration, the ordinary is neither "authorized" nor "required" to vest the administration in the county administrator or in anyone else.

The Atlanta Legal Aid Society reports that the county administrator in Georgia has been helpful in handling estates for persons who have not had the business experience to handle them, and who at the same time are not financially able to employ an attorney. Likewise, the President of the Atlanta Bar Association writes that in his experience the system has been "very satisfactory."

4. Massachusetts. Massachusetts has public administrators with the duty of administering the estates of persons who have died intestate, leaving property to be administered and not leaving a known spouse or heir in the State. They receive no salary, but are allowed compensation out of the estate subject to the approval of the Probate Court. The Attorney General must approve all their final accounts. It is further provided that if the value of an estate which has come into the control of a public administrator is under \$100., he is to reduce it to cash, without taking administration, and deposit the money with the State Treasurer, who in turn is to hold it for the benefit of any person having legal claim thereto.

The public administrator in Massachusetts seems to get a relatively small number of estates to administer. In 1943, that official in Middlesex County (population 971,000) had 34 petitions filed.

5. Michigan. When an estate in Michigan consists of personal property having a value less than \$200., the probate judge may order it turned over to the widow, the nearest of kin, or the person who paid the funeral expenses of the decedent. In return, he is to receive evidence that the funeral expenses have been paid. The order of transfer is to be given without the appointment of an administrator or the giving of a bond.

6. Missouri. Similarly, if an estate in Missouri is not greater than the amount set aside as an allowance for a surviving spouse or minor children (\$400.), the probate court is not to grant letters of administration. The survivors then are permitted by order to collect and retain all the property belonging to the estate. The only requirement for the survivor in such an instance is the filing of an application for no administration, at a maximum cost of \$2.50.

7. North Carolina. In North Carolina, in approximately three-fourths of the one hundred counties, any debt up to \$300. owing to an intestate may be paid to the clerk of the superior (i.e., county) court. The debtor thereby secures a complete release and discharge from the debt, and the clerk is empowered to pay out the money to one entitled thereto, subject to the prior claims of the widow's year's allowance and of the payment of funeral expense.

Letters from a number of county officials in North Carolina indicate general satisfaction with the workings of this law. In many in-

stances it simply has the effect of transferring to a widow and children the allowances given them, without the necessity for administration. Some North Carolina officials want the law extended to assets other than debts, and in amounts greater than \$300., and for these reasons have tended to give a broad interpretation to the word "debts."

8. North Dakota. North Dakota has a Public Administrator who is to take over any estate up to \$300. if there appear to be no relatives or heirs. After due publication of notice, if no legally interested party appears to claim the property, the Public Administrator is to reduce it to cash, settle any valid claims against the estate, and pay the proceeds into the County General Fund. The administrator receives for his services 10% of the sale price, in no event to exceed \$25.

9. Pennsylvania. When a person dies intestate in Pennsylvania, leaving real and personal property of a value not exceeding \$200., the Orphans' Court may make distribution of the entire amount without the grant of letters of administration, to the persons entitled thereto had letters been granted. This provision was enacted in 1939, but it is used only infrequently because Pennsylvania decisions make it possible to settle an estate of that size by agreement among the parties, without the aid of the Court. Unless there is some technical necessity for the granting of letters, therefore, the act of 1939 is not used. It is reported from York County that the court costs in such an event would be from \$3. to \$5.

10. South Carolina. When a person dies intestate in South Carolina, leaving personal property of a value up to \$500., the Probate Judge is to receive the estate and (after paying the expenses of the last ill-

ness and the funeral) turn it over to the proper persons. Anyone having property or a debt belonging to the decedent is to turn it over to the Probate Judge, being thereby relieved of all liability to the estate. The Probate Judge gets as compensation 5% on the first two hundred dollars and 1% of all over that amount.

11. Wisconsin. When an estate in Wisconsin is not valued at more than \$1,000., and there is no contest and the parties so request, the judge or clerk of the county court is to draw all the papers necessary for settlement and distribution, free of charge.

The Legislative Council received an extended report of the workings of this statute in Milwaukee County, in which is located the city of Milwaukee. Because of the volume of work which passes through its courts, Milwaukee County administers the statute differently from all other counties in the state. An attorney is hired, at a maximum annual salary of \$3,600., to handle such probate matters. He is a full time employee, subject to the orders of the probate court, and strictly observes the statutory requirements that there be no contest and that the estate be valued under \$1,000. The estate is charged with a filing fee, which in Milwaukee County is \$3., and with publication and appraisers' fees.

The same attorney in Milwaukee County handles some of the guardianships and matters of adoption. It is reported by the Register of Probate that this method of handling certain small estates "has been of benefit to hundreds of persons and from this standpoint the cost of the employment of the attorney by the County has been well worthwhile."

12. Wyoming. In Wyoming, seemingly for all estates under \$500., the county attorney is to act as administrator, making an inventory and filing it with the district court of the county, receiving debts due the decedent, and making proper distribution, subject to a final review by the court. The court may dispense with notice to creditors in any such action.

The County and Prosecuting Attorney of Laramie County (which includes the city of Cheyenne) indicates that he is dissatisfied with the Wyoming law. "We find that there is no way for the County and Clerk of Court to effectively obtain the information necessary to probate such estates," he writes. "In practice such probates are done in a haphazard way. Where real estate is involved there is a serious question about the validity of the title passed.... In order to protect ourselves from criticism we must prolong the probation of these estates a year or two, to see whether or not some heirs or creditors unknown to us will... present their claims."

#### E. Simplified or Summary Procedure

Eighteen states (Arizona, Arkansas, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Montana, Nebraska, Nevada, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Washington, West Virginia, Wisconsin) allow the administrators of certain small estates to complete their work in more direct or summary fashion than the ordinary administrator. Typically, these laws apply to estates of from \$300. to \$1,000., or perhaps to personal property only between these ranges. Occasionally, the amount is less than \$300., as in Oregon (\$150.) and in West Virginia (\$200.). Some-

times it is greater than \$1,000., as in Montana (\$1,500.), Oklahoma (\$1,500.), and South Dakota (real and personal property up to \$1,500., or personal property up to \$750. plus a homestead up to \$5,000.)

Typically, too, the statutes do not specify the exact details of the simplified administration, usually simply directing the probate court in these instances to "proceed" with administration and distribution. In any event, these details have been adapted to the needs and procedures of other states and as such have but secondary interest elsewhere.

A number of the states in this group have provisions for decreasing the cost of administering small estates. Thus, there are no fees for administering personal property up to \$300. in either Arizona and Arkansas. In Kansas the probate court may remit costs for estates up to \$500., and in Louisiana costs for estates up to \$500. have been cut by one-half.

#### F. Number of Small Estates

The recapitulation of expenses in fifty sample accounts of administration, shown in Section A above, gives an approximation of the results to be expected from any modification or elimination of one or another type of these expenses, so far as concerns those who may be sharing in the distribution of an estate. Thus, if the Register's fees were to be halved, or cut by some other percentage, the approximate saving to any individual account could be computed from these figures. However, since any such change would also decrease the amount of fees turned over to the State Treasury, it becomes important to know the number of small estates which are administered.

The various Registers of Wills must account for all the receipts of their offices, to the Comptroller of the Treasury. They turn over to the State Treasury all collections for the inheritance tax and for the tax on commissions of administrators and executors. Before paying to the State the moneys collected as fees, however, they deduct the amounts necessary for expenses of their offices and turn over only the net amounts, and if the fees collected are not sufficient to pay these expenses the State makes up the balance.

The tabulation below shows for the fiscal year of 1944<sup>1</sup> (ending June 30, 1944) the net amounts of excess or deficiency, by counties:

<u>County</u>	<u>Excess Fees</u>	<u>Deficiency</u>
Allegany	\$ 3,423.83	\$ -
Anne Arundel	319.95	-
Baltimore Co.	12,009.48	-
Calvert	-	1,472.76
Caroline	-	-
Carroll	57.36	-
Cecil	167.46	-
Charles	120.96	-
Dorchester	-	1,624.84
Frederick	1,689.94	-
Garrett	-	429.92
Harford	-	372.90
Howard	305.59	-
Kent	-	2,007.43
Montgomery	4,656.87	-
Prince George's	11.81	-
Queen Anne's	-	2,421.38
St. Mary's	-	414.26
Somerset	-	2,457.61
Talbot	700.90	-
Washington	891.21	-
Wicomico	755.16	-
Worcester	-	272.46
Baltimore City	116,601.14	-
Totals	\$141,711.66	\$ 11,473.56

These figures show a net excess of about \$130,250. for fiscal 1944.

<sup>1</sup>These figures were supplied by the Comptroller's Office, in advance of publication.

In a recent period of one year, the Registers of Wills have passed administration accounts through their offices as follows:

County	Under \$500.	\$500.- 1,000.	Over \$1,000.	Total
Alleghany	29	38	195	262
Anne Arundel	23	25	54	102
Baltimore Co.	103	64	170	337
Calvert	5	3	15	23
Caroline	22	9	38	69
Carroll	55	22	44	121
Cecil	40	20	85	145
Charles	12	19	25	56
Dorchester	27	15	41	83
Frederick	39	24	185	248
Garrett	12	8	35	55
Harford	36	48	72	156
Howard	10	15	32	57
Kent	13	22	37	72
Montgomery	36	49	215	300
Prince George's	40	37	123	200
Queen Anne's	16	12	18	46
St. Mary's	20	6	19	45
Somerset	28	13	14	55
Talbot	23	15	55	93
Washington	35	39	143	217
Wicomico	57	32	72	161
Worcester	22	18	41	81
Baltimore City	266	298	1265	1829
Totals	969	851	299	4813

These figures show a total of 4813 administration accounts passing through the offices of the Registers of Wills in a period of one year, with 969 accounts, just about 20%, being for estates under \$500.

Using this latter figure, with that of \$12.68 as being the "average" total of the fees collected for each by the Registers of Wills, it follows that the cost to the State of a total forgiveness of all such fees for the administration of small estates would be annually about \$12,300. Any lesser rate of forgiveness could be computed in proportion. Against these sums

could be balanced the amount of any savings possibly resulting from less clerical work.

It might be possible, too, to provide a forgiveness of the fees for only those small estates which meet certain conditions, so that something less than the total number of small estates would have their fees forgiven, with the cost to the State being accordingly reduced. Thus, one Register of Wills in Maryland has suggested that if a decedent's personal estate is not more than \$500., the person normally entitled thereto might be empowered to give notice to creditors for 30 days (as distinct from the six months now required generally). If no claim is filed within those 30 days, according to the suggestion, the Orphans' Court could pass an order of no administration, vesting the property in the proper person, there having been no grant of letters, no requirement for a bond, and no expense other than that of notice. Obviously, not all small estates would be able to meet this condition of having no claims of creditors filed, so that the cost to the State in the form of remitted fees would be somewhat less than that estimated above.

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