§ 1412. Preliminary letters testamentary

1. Whenever a petition for probate of a will (other than a lost or destroyed will) has been filed and process has issued thereon, an executor named in the will may file with the court a written request for the issuance to him of preliminary letters testamentary. In its discretion the court may accept a written request for such letters prior to the issuance of process upon such proof as the court shall deem necessary. Where the request is made by one of several nominated executors, notice shall be given to all persons who under the terms of the will have a right to letters testamentary equal to that of the petitioner. Where there is another will of the same testator on file in the court that is later in date than the propounded instrument, notice shall be given to all persons who under the terms of the later will would have the right to letters testamentary immediately upon probate of such later will.

2. (a) Notice hereunder shall be given at the time and in the manner directed by the court and may be given either before or after issuance of preliminary letters. Any person having a right to letters testamentary equal to that of an applicant for preliminary letters testamentary may join in the application for such letters and may request that they issue to him or after the issue of such letters may request that the letters heretofore issued be extended to him. A person named in the will to act as executor upon the occurrence of any contingency may in like manner request issuance of such letters, provided that the contingency has occurred which would entitle him to be appointed executor. A person named as executor in a will later in date than that in which the first applicant is appointed may file a written cross-request for preliminary letters testamentary after he has filed a petition for probate of such later will and process has been issued thereon. Unless, for good cause shown, the court shall otherwise direct, the person named as executor in the latest such will shall have a prior right to preliminary letters testamentary.

(b) When preliminary letters testamentary have been issued and thereafter a will later in date has been filed with a petition for its probate, and process has been issued thereon, an executor named in the

later will may request the revocation of the prior letters and the issuance of preliminary letters to him, and upon such notice as the court may direct, the court shall have discretion to revoke the letters theretofore issued and grant preliminary letters testamentary to the executor named in the later will, to grant preliminary letters testamentary jointly to the executors named in both wills, to confirm the grant of letters theretofore issued, or to take such other action as the court deems to be for the best interests of the estate and of the persons interested therein.

3. (a) Upon due qualification as provided in subdivision 5 and upon the issuance of process, and whether before or after the return day of said process, preliminary letters testamentary must thereupon be issued to the person or persons who appear to the court to be entitled thereto, and where the court has accepted a request for such letters prior to the issuance of process, preliminary letters testamentary may be issued in the discretion of the court upon due qualification as provided in subdivision 5. The letters shall confer upon the person named therein, subject to any limitations contained in the instrument offered for probate, all the powers and authority and shall subject him to all the duties and liabilities of an administrator except that they do not confer any power to pay or to satisfy a legacy or distributive share. Unless the court or the instrument offered for probate directs otherwise, a preliminary executor is also authorized to take possession of, manage and sell any real property devised by and any personal property specifically bequeathed by the instrument offered for probate and to allocate the expenses of managing such property in accordance with what is reasonable and equitable in view of the interests of those persons interested in such property and in the estate, except that any such property specifically devised or bequeathed may only be sold or otherwise disposed of with the written consent of the specific devisee or legatee or by court order. This authority shall not prevent the preliminary executor from permitting the devisee or legatee of such property to have possession of such property.

(b) A preliminary executor shall give notice to all parties who have appeared of his or her appointment within ten days of such appointment.

4. (a) The court may in the order directing the issuance of preliminary letters testamentary or in one or more subsequent orders limit preliminary letters testamentary to the receipt of assets specified in such order or orders and may prohibit the collection of any other assets of the decedent, or may limit or authorize the person named in such letters in any manner that the court deems advisable for the effective protection of the rights of all persons who may have an interest in the estate of the decedent.

(b) In such order or orders, the court may make such directions as it deems proper and necessary with respect to the custody and preservation of all papers and records of the decedent. Discovery and production of such papers and records shall be governed by article thirty-one of the civil practice law and rules.

5. Before preliminary letters testamentary are issued to a named executor he shall qualify as provided in 708. If the will offered for probate shall require the filing of a bond by the executor the person requesting preliminary letters testamentary must file his bond in accordance with the requirements of the will. In addition the court shall have full and complete discretion to require him to file such additional bond as it deems advisable under the circumstances of the particular case. Where the will is silent in respect of the filing of a bond or where it explicitly dispenses with the filing of a bond the court shall nevertheless have full and complete discretion at any time and from time to time to require the person seeking such letters to file a bond in such amount as the court deems advisable under the circumstances of the particular case or it may grant such letters without bond. Where the will explicitly dispenses with the filing of a bond, the court shall grant such letters without bond, unless it determines there are extraordinary circumstances in the particular case to warrant filing of a bond, in which case the court shall have discretion to require the person seeking such letters to file a bond in such amount as the court deems advisable.

6. A decree denying probate to a propounded instrument shall revoke any preliminary letters testamentary issued upon such instrument unless the court shall direct that such letters continue until the termination

of any appeal and in such case the court may make such limitations, restrictions or conditions on such letters as justice may require. The court may revoke preliminary letters testamentary at any time

(a) if it shall appear that the preliminary executor is guilty of unreasonable delay in the probate proceeding or

(b) for any cause that would justify the revocation of letters under 719 or

(c) for any other reason deemed by the court to be in the best interests of the estate.

7. A preliminary executor shall not be entitled to the commissions provided for a fiduciary in this act unless the will be admitted to probate and letters testamentary are issued to him, in which event he shall be entitled to commissions as provided in this act for a case where successive letters are issued to the same person on the estate of the same decedent. If the will be denied probate or his letters are revoked for any reason during the pendency of the probate proceeding he shall be entitled for such service to receive only such compensation, if any, as the court shall determine to be reasonable and just for the services rendered by him to the estate, not to exceed the commissions to which an executor would be entitled. For purpose of the fixation of such commissions or compensation any real property or specifically devised personal property of which a preliminary executor took possession and then distributed or otherwise disposed of shall be treated as property received, distributed or delivered.