



## INFORMATION FOR SURROGATES AND PROBATE COURTS: VCF Treatment of Letters of Administration or other Court Orders that Limit the Authority of a Personal Representative

The purpose of this document is to explain how the September 11th Victim Compensation Fund (“VCF”) interprets and evaluates limitations in Letters of Administration for purposes of processing and paying VCF claims.

Under the VCF Act, the VCF provides compensation for two types claims filed on behalf of deceased victims. First, the VCF will award compensation based on the personal injury to the decedent as a result of his or her eligible 9/11-related physical conditions. Second, if the decedent died as a result of his or her eligible 9/11-related conditions, the VCF will also award compensation for the decedent’s wrongful death to the decedent’s family and/or beneficiaries.

Only an authorized Personal Representative may file a claim with the VCF on behalf of a deceased victim. If an award is made on the claim, the VCF will pay the award to the authorized Personal Representative. The Personal Representative is required to distribute any VCF award in accordance with state law and the orders of any applicable Court.

In order to process a claim filed on behalf of a deceased individual, the Special Master must first “validate” the Personal Representative of the decedent as having the appropriate authority necessary to file and collect payment on the claim. To validate the Personal Representative, the Special Master evaluates the Letters of Administration, Letters Testamentary, court orders, or other similar documentation issued by a court. Many Letters of Administration and court orders contain limitations that restrict the Personal Representative’s ability to file or collect payment on a VCF claim. Below are examples of common types of limitations that the VCF sees and the effect those limitations have on a VCF claim.

- **Limitations related to the Personal Representative’s authority to file, prosecute, and/or compromise any action or claim on behalf of the decedent:** Congress designed the VCF to operate as an alternative to litigation. Thus, in order to file a claim with the VCF, the Personal Representative must have the authority to waive the right to file certain civil causes of action on behalf of the estate based on the decedent’s 9/11-related injuries and/or death. If there are limitations regarding the Personal Representative’s authority to file, prosecute, and/or compromise a claim on behalf of a decedent or the decedent’s estate, the VCF may nevertheless accept the Letters of Administration or court order in certain circumstances, described below.
  - **Letters of Administration or court order issued by a New York State Probate or Surrogate’s Court:**
    - Personal Representatives appointed in the state of New York have limited authority when filing a VCF claim for personal injury or wrongful death on behalf of deceased individuals.<sup>1</sup> The New York State limitation allows Personal

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<sup>1</sup>The September 11th Victims and Families Relief Act (enacted May 21, 2002) removes many of the limitations from the letters of administration issued by Surrogate’s Courts in the State of New York. The law provides that a Personal Representative appointed by a Surrogate’s Court can file, prosecute, and compromise a claim even if there are restrictions in the letters of administration. See 2002 N.Y. Laws Ch. 73 (S.7356). Specifically, the law states, “Notwithstanding any other provision of law to the contrary, or any restrictions set forth in letters relating to any decedent who is a victim of the terrorist attacks on September eleventh, two thousand one, a duly appointed personal representative is authorized to file and prosecute a claim with the fund, and the filing of such a claim for an award from the fund, and the resulting compromise of any cause of action pursuant to the act, shall not violate any restriction on the powers granted to the personal representative relating to the prosecution or compromise of any action, the collection of any settlement, or the



Representatives to file personal injury and/or wrongful death claims with the VCF; however, Personal Representatives are not allowed to receive any VCF award payments until they obtain revised documents from the New York State Probate or Surrogate's Court that authorize the collection of the VCF award. This means the VCF will process personal injury and wrongful death claims filed by Personal Representatives appointed in the state of New York, but the VCF is unable to issue payments of any awards to the Personal Representative until they provide the revised documents that authorize the collection of the VCF award.

- **Letters of Administration or court order issued by a Probate or Surrogate's court outside of New York State:** If the court issuing the Letters of Administration or court order is outside of the state of New York, and the Letters of Administration or court order include a limitation prohibiting the filing, prosecution, and/or compromise of a cause of action, then the VCF will not process the claim – regardless of whether the decedent's death was caused by an eligible condition – until we have received acceptable revised Letters of Administration or a court order that permit the Personal Representative to pursue a claim with the VCF on behalf of the decedent.
  - **Limitations restricting the amount of funds the Personal Representative can collect on behalf of the decedent's estate:** If the Letters of Administration or court order limits the amount of money that the Personal Representative can collect, the VCF will generally accept the Letters of Administration or court order for purposes of processing the claim, but will not make any payment in excess of the specified dollar limitation, without further order of the court. For example, if the Letters of Administration or court order restricts the Personal Representative from collecting more than \$25,000 and the VCF issues an award determination letter indicating a total loss of \$250,000, the VCF will only issue a \$25,000 payment without further order of the court. This policy applies regardless of the state in which the Personal Representative is appointed and regardless of the cause of death (in other words, notwithstanding EPTL section 11-4.7, this applies even if the Letters of Administration were issued in New York).
- The VCF makes payment directly to the appointed Personal Representative of the deceased victim's estate, and does not review or approve distribution plans except in extraordinary circumstances. Once an award determination has been made, the Personal Representative will receive a notification stating the amount of the VCF award and will be advised that the VCF cannot issue the full payment because of limitations in the Letters of Administration.
- **Limitations restricting the Personal Representative's authority to specific acts:** If the Letters of Administration or court order authorizes the Personal Representative to take only a specific action(s) with respect to the estate, such as open an estate bank account or empty a storage locker owned by the decedent, then the VCF generally will not process the claim until it receives amended Letters of Administration or a court order expanding the authority of the Personal Representative to act. This policy applies regardless of the state in which the Personal Representative was appointed and regardless of the cause of death (in other words, notwithstanding EPTL section 11-4.7, this applies even if the Letters of Administration were issued in New York).
  - **Time-Limited Court Orders/Letters of Administration:** If the Letters of Administration or court order contains an expiration date, the VCF will require revised Letters of Administration or a

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enforcement of any judgment." Id. § 4(e)(3), amending N.Y. EST, POWERS & TRUSTS § 11-4.7(e)(3).



court order that extends the Personal Representative's authority to collect assets or administer the estate if the letters or order expire prior to the payment being issued on the claim. This policy applies regardless of the state in which the Personal Representative was appointed and regardless of the cause of death (in other words, this applies even if the Letters of Administration were issued in New York).

Questions regarding the VCF's policies and procedures may be directed to the VCF Helpline at 1-855-885-1555.