

PROCEDURES REQUIRED FOR THE ADMINISTRATION AND SETTLEMENT OF AN ESTATE FOLLOWING DEATH WHEN AN INDEPENDENT EXECUTOR IS APPOINTED

The Personal Representative or Independent Executor of an estate is a position that carries with it a great deal of responsibility. As the executor of an estate, you are responsible for the probate of the will, administration and settlement of the estate, and preparation of any tax returns required to be filed on behalf of the individual or the estate. The following is a brief outline of your duties as executor and a summary of the probate process.

Administration of the Estate

The administration of an estate involves (1) gathering the assets of the person who died, (2) paying the debts of that person, and (3) distributing the assets left to those who are entitled under the will to have them.

As the executor of the estate, you have a duty to take possession of all property belonging to the decedent. However, you should never co-mingle property belonging to the estate with your personal assets. Any cash that you receive should be maintained in a bank account separate from your personal funds. You must use ordinary diligence in the collection of all claims and debts which are owed to the estate.

Claims of creditors against the estate may be presented to you at any time while the estate remains open. You may allow any claim which you feel is a just debt of the estate and is properly presented to you and authenticated, provided such claim is not barred by the statute of limitations. Once a claim is presented to you, you must either allow it or disallow it. If it is rejected, the creditor will have to file suit to secure payment of the claim.

Once all debts of the estate are paid off, you may distribute the remaining property of the estate to the persons named in the will and in the manner contemplated by the will. If the will does not deliver all assets of the estate to named beneficiaries, it will be necessary for the Court to make a determination as to whom the property is to be delivered after the debts have been paid. This proceeding is called an heirship determination and requires a hearing in open court to determine who the heirs of the estate are.

Probate Proceedings

The first step in probating a will is to file an application to probate the will, along with the original will and death certificate, with the Court. At the time of filing, a hearing date will be set in which a court appearance will be made in order to probate the will and to qualify the executor. After the will is admitted to probate and the executor is appointed and qualified, the Court will issue Letters Testamentary to the executor, usually on the same day as the hearing. Within ninety (90) days of the date the executor is qualified, the executor must file with the Court a complete inventory of the assets of the estate and a list of claims owing to the estate. After the debts of the estate have been paid and all of the assets are distributed, the executor may, but is not required to, file an affidavit closing the estate.

On the day of the hearing, we will appear before the judge and you will testify as to certain facts regarding the death of the decedent. All of the questions I will ask you at the hearing are contained in the Proof of Death and Other Facts, a copy of which I will send you before the hearing. After you testify, the judge will sign an order admitting the will to probate and appointing you as executor of the estate, unless he finds some reason not to do so. After he signs the order, you will take the oath of an executor, and then you will be issued Letters Testamentary.

The Letters Testamentary are what give third parties notice that you are the executor of the estate and that you have the authority to administer the estate. You will need the Letters to gain access to bank accounts, to transfer title to property, and to engage in any other transaction regarding the administration of the estate. Additional copies of the Letters can be ordered from the court clerk's office.

One of your duties as executor is to publish a notice in a newspaper printed in the county to notify unsecured creditors that you have been appointed as executor and that you represent the estate. As a general rule, our firm will make sure that this requirement is met by requesting the notice to be published on your behalf. This must be done within thirty (30) days of your appointment. You are also required to send notice to each secured creditor of the estate and to each person that you have knowledge of having a claim against the estate within one hundred twenty (120) days of your appointment. Proof of both of these notices must be filed among the papers of the estate.

The only other document required to be filed with the court is an Inventory, Appraisal and List of Claims of the Estate. This document lists all of the assets of the estate as of the date of death and any claims which are owed *to* the estate, and the values of such assets and claims. In order to value all of the assets, you should provide your own personal best estimate of the fair market value of each item. The following is a list of possible items to be included in this inventory:

1. Any real estate, including mineral interests, owned by the decedent. The description of the property must be sufficient to transfer legal title to the property. Include the name and address of each mortgage company or person who presently owns or holds a mortgage note

2. Deposits in financial institutions, including money market funds with brokerage firms, certificates of deposit, money market funds, IRA's, checking deposits, savings accounts, etc. Identify each account by:
 - Account Number;
 - Name and address of the depository;
 - The name or style of the account;
 - Account balance as of the date of death.

3. Publicly traded stocks and bonds owned by decedent at the date of death. Include the following information:

- The name of the issuer and the address of the issuer's transfer agent;
- A copy of each stock, bond, partnership interest or other security interest;
- The value on the date of death.

4. If the decedent owned an interest in a closely held business, corporation or partnership (i.e., a security which is not traded on a public market), I need your best estimate of the value of the decedent's ownership interest. I will also need copies of any partnership agreement or shareholder's agreement, if available.

5. A list of all notes receivable, secured or unsecured owed to the decedent at the time of death, including the balance due and any interest which has accrued.

6. List of all vehicles owned, including description, year, model, mileage and estimated blue book value. Include farm equipment, boats, etc., if any.

7. As a general rule, household furnishings and equipment will not need to be inventoried and valued unless the value, in the cumulative, or the value of a particular item exceeds \$10,000.

8. For collectibles, such as coins, bullion, jewelry and art, inventory the collection and seek a professional valuation unless the collection is of incidental value.

Finally, after all debts have been paid and all distributions have been made, the estate can be formally closed by filing an affidavit with the court stating that there is no longer a need for administration of the estate because all of the debts have been paid and all distributions have been made. Filing this affidavit is not required by the court or the statute.

Federal Income and Gift and Estate Tax Matters

As executor of the estate, you are required to file the decedent's final personal income tax return for the year in which he or she died. The final income tax return is due on April 15 of the year following death. If you have any questions about filing the personal tax return, we can assist you, or you may want to contact a CPA to have this return filed.

For individuals dying in 2011 and 2012 having estates valued at more than \$5,000,000, the executor also has the responsibility to file a federal estate tax return. The estate and gift tax return is due nine (9) months after the date of death. If this return is required to be filed, we can assist you in filing it in a timely manner, or you may request the assistance of a CPA.

This information has been provided as a basic guide to help answer commonly asked questions regarding the administration of an estate. It is not intended to be a complete narrative on every aspect of the probate and administration of an estate.