

WHAT TO EXPECT WHEN SETTLING A LOVED ONE'S ESTATE

LOSING A LOVED ONE IS DIFFICULT FOR THE SURVIVORS. You must address certain legal and financial matters to compound grief's toll. The purpose of this article is to let you know what to expect as your loved one's financial and legal affairs are settled through a process called estate administration. In this guide we will outline steps you can take to help make the best use of your time, energy, and resources throughout the process. We also hope to possibly diffuse the potential for conflicts over assets or financial exploitation during this time of grief and remembrance.

KEEP BASIC INFORMATION HANDY

Putting a loved one's affairs in order after death takes a great deal of coordination. There will be a number of organizations to contact, all with differing requirements that must be satisfied

Minimize frustration and pointless delays by keeping your loved one's basic information in an easily accessible place.

before they can help you.

While you cannot anticipate their every request, you can arm yourself with some basic information. Minimize

frustration by keeping a notebook with you that includes your loved one's date of birth, place of birth, maiden name, social security number, dates of service in the Armed Forces, spouse's name, and residence.

GATHER IMPORTANT DOCUMENTS

A death certificate is an instrumental document that will be repeatedly requested. Insurance companies, government agencies, financial institutions, creditors, and other membership groups all require proof of death before they can allow you to take action on behalf of the decedent's estate. You should obtain at least a dozen certified copies of the death certificate.

The other critical piece of information that you will want to immediately address is to determine whether your loved one had a will or a trust and whether they had any pre-paid distribution plans. A pre-paid distribution plan can take the form of a living trust, payable-on-death account, agreements with funeral service providers, or funeral or burial insurance.

If you are not sure whether the person had these documents or where they may be stored, ask other family members or close friends and check safety deposit boxes and home file drawers. Additionally, check with your loved one's attorneys or financial advisers to find out if they have copies.

PROTECT YOUR LOVED ONE'S LEGACY

You should move swiftly to protect your loved one's legacy. Lock his or her residence and automobile and do not permit the removal of any tangible personal property. Collect the decedent's mail as his or her bills must continue to be paid. In addition to satisfying creditors, collecting the mail serves another important purpose: It provides insights about the accounts and institutions that your loved one established relationships with during his or her lifetime.

If you are the surviving spouse, you may be personally liable for your loved one's debts,

Many financial advisers provide clients with digital storage of important legal documents and may have all of the items you need readily available.

depending on your state of residence. If you were not married to the deceased, you should refrain from paying the bills from your own account because you may be deemed as assuming responsibility for those debts. The trustee or executor should pay all bills from the decedent's own accounts.

Credit card companies and credit reporting agencies should be notified of your loved one's passing and that the accounts will be closed in the near future. This will help protect against fraud and ensure

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that no one is permitted to make additional charges after the date of death. Notice of death should also be given to the decedent's employer, the social security administration, post office, utility companies, and insurance companies.

Another way to protect your loved one's legacy is by addressing their digital presence. You may want to consider hiring a service to terminate your loved one's e-mail accounts, and social and business networking accounts on websites such as Twitter, LinkedIn, Instagram, and Facebook.

THE PROBATE PROCESS

Probate is a public legal process which settles your loved one's final debts and formally passes legal title to his or her property

You cannot bypass many of the steps associated with probate, even if probate itself is avoided.

to beneficiaries and heirs. The steps of probate are tasks that must be completed on behalf of any person who dies, whether

he or she has a will, trust, or neither. These chores can vary in complexity, depending on the nature of the decedent's property and the reasonableness of those involved. The process can take anywhere between one to two years and, depending on the complexity, could cost tens of thousands of dollars.

THE PROBATE PROCESS INVOLVES THREE MAIN PARTS:

- Determine all assets subject to probate and collect, inventory, and appraise those assets
- Pay all of the decedent's bills, taxes, estate expenses, and creditors
- Formally transfer property according to the will or by the state laws of intestacy succession (if there is no will)

IF THERE IS NO WILL OR TRUST

If your loved one did not have a will or a trust, he or she would be said to have died "intestate." The laws of the state in which your loved one died dictate how the estate is administered. While the laws vary from state to state, typically the surviving spouse and descendants of someone who dies intestate are first in line to inherit the assets. Absent a surviving spouse or descendants,

his or her parents would typically inherit any remaining assets, followed by siblings and their descendants.

IF THERE IS A WILL

If there is a will, you can identify the person who has authority to make decisions and take action to administer your loved one's estate. That person is the Executor (or Executrix) and he or she will be responsible for carrying out the provisions of the will. This person or institution will perform his or her duties under the supervision of the court through the three

Most wills grant the executor wide discretion in handling property and the affairs of the estate, and the law permits this.

steps described above as part of the probate process. When there is no will, the court chooses an administrator to fulfill the duties an executor would have fulfilled if there had been a will.

SOME OF THE TASKS YOU CAN EXPECT THE EXECUTOR TO PERFORM COULD INCLUDE:

- Managing the financial affairs of the estate
 - Establishing an account for any money owed
 - Collecting any money due
 - Creating a list of claims against the estate
 - Alerting creditors of death
 - Paying all bills
 - Distributing assets to heirs in accordance with the provisions in the will and under the supervision of the court
 - Selling assets, if necessary
- Initiating and completing the probate process
- Interacting with governmental agencies
 - Obtaining the tax identification number from IRS
 - Preparing tax returns and paying tax liabilities

The executor only has official authority once the will is probated. Therefore, he or she should generally not take action until that point. Some things, however, cannot wait. The executor should pay burial expenses and take care of estate property before appointment if necessary (e.g. maintain real estate or continue to operate a business).

The executor would be wise to consult with professionals (lawyers, financial advisers, and accountants) throughout the process and may pay for assistance using estate funds.

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SPOUSAL RIGHTS

If there is a will then the surviving spouse/civil partner has rights to what is called a "legal right share" of the deceased's estate. If there are no children, the legal right share is one-half of the estate. If there are children, then the spouse/civil partner is entitled to one-third of the estate. This law protects those spouses or civil partners who are not recognized in the will. If that is the case, the spouse is entitled to his/her share without court intervention.

LOSING YOUR RIGHTS UNDER A WILL

Spouses sometimes waive their rights in favor of a child. Also, if a couple is going through a divorce, the separation agreement may have a provision whereby the spouse renounces his or her legal right share. Divorce typically terminates succession rights.

RIGHTS OF CHILDREN UNDER A WILL

Unlike spousal legal rights, children have no such absolute right to inherit their parent's estate if the parent has made a will. If a child is displeased by what has been left for him or her in the will, he or she can petition the court.

DISPOSITION OF ASSETS...

OUTSIDE OF THE PROBATE PROCESS

When your loved one opened accounts or acquired property, he or she would have had to determine the titling of the account. Titling is important because it informs the disposition. For example:

Joint Property, like joint bank accounts or real estate titled in joint tenancy with the right of survivorship, will automatically transfer to the survivor without going through probate. The survivor simply must remove the descendant's name from the title at which time he or she would enjoy full ownership of the property.

Pay-on-Death Accounts, sometimes called Totten Trust, also bypass the probate process. These accounts typically transfer to the beneficiary upon owner's death.

Life Insurance Policies and Retirement Plans. Life insurance proceeds and retirement plans are paid directly to the named beneficiaries. Like pay-on-death accounts and joint property, these assets are not subject to the probate process. If there is no named beneficiary, the proceeds will get paid to the descendant's estate and distributed accordingly.

Survivor Benefits. Surviving spouses and family members may be eligible to collect survival benefits or funeral expenses from the Social Security Administration or the Department of Veterans Affairs. Other potential sources for survival and/or burial expenses are the decedent's pension plan, workers' compensation, health insurance coverage, car loans, credit card agreements, and mortgages. Each of these agencies or insurers should be contacted to find out if your loved one's death qualifies for the payment of any such benefits. In addition, your loved one's employer may pay out 401(k) funds, earned and unused vacation time, holiday pay, or bonus compensation.

TRUST ASSETS

A trust is a legal entity that can hold assets for the benefit of a third party. There are many varieties of trusts; each designed to accomplish specific goals. They all have their own sets of rules with unique advantages and disadvantages.

Trusts are typically created to give the grantor (the person who established the trust) control over how his or her property is distributed after death and to minimize the tax liability he or she leave behind.

The trust document specifies the person or entity that the grantor chose as trustee. The trustee is responsible for managing the assets in the trust in a manner consistent with the interests of the beneficiaries, and to distribute the trust property in accordance with the instructions contained in the trust agreement. They have a fiduciary duty to protect and preserve trust assets, and to invest those assets prudently with the beneficiaries' best interests in mind.

Unlike property left behind in a will, assets held in a trust do not go through the probate process.

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TAX CONSIDERATIONS

Throughout the settling of your loved one's affairs, you will undoubtedly hear about the estate's tax obligation. Without proper advanced planning, the tax liability can significantly decrease the value of the legacy left behind.

ESTATE TAXES

The IRS defines estate taxes as "... a tax on your right to transfer property at your death." The estate tax consists of an accounting of the fair market value of everything you own or have legal interest in at the date of death. An experienced tax or probate attorney can help you determine whether you must file an estate tax return. Most relatively simple estates (cash, publicly traded securities, small amounts of other easily valued assets, and no special deductions or elections, or jointly held property) do not require the filing of an estate tax return. If the gross estate exceeds \$5.45 million, however, such filing will be necessary for estates started in 2016. Your attorney can also tell you if your loved one's estate may be subject to state-level estate taxes.

INCOME TAXES

A personal income tax return must be prepared and filed for the portion of the last year of the person's life through the date of death. The surviving spouse may file the return as married jointly on behalf of both spouses for the first part of the year. For the second part of the year, however, a fiduciary tax return must be filed for income earned by the decedent's estate or trust after death. Income earned during life, and income earned after death (e.g., through trust-owned rental property), are treated differently from an income tax perspective.

CAPITAL GAINS

Capital gains refer to an appreciation in value. For example, if someone purchased stock in 2007 for \$100,000 (cost basis) and

then sold it in 2012 for \$150,000 (amount realized), the \$50,000 capital gain would be subject to a 15% federal capital gains tax, and applicable state capital gains tax.

Inherited property steps up the cost basis to the full fair market value at the date of death. Carrying out the example above, if instead of selling the stock, the owner dies when the stock was valued at \$150,000, and the heirs immediately sell it for that amount, there would be no gain. The basis would be stepped up to the \$150,000 value on the date of death. Capital gains tax could be due, however, if the value appreciates between the date of death and the date of sale.

Capital gains tax rates also depend on the holding period (longer or shorter than 12 months) and your income tax bracket. As of 2016, individuals in the top income tax bracket pay 20% federal capital gains tax.

YOUR TEAM OF PROFESSIONALS

The process of settling a loved one's estate can get complicated. It is also sometimes difficult to manage while dealing with all of the emotions associated with grief. This is a time when you should surround yourself with trusted professionals who can guide you and your loved ones through the complicated process of wealth transfer.

Qualified financial advisers or valuation consultants can be a considerable help with asset identification, collection, valuation, and investments. You will want to work with an attorney to help you in probating the estate and administering the trust. Together, your financial adviser and attorney develop tax and legal strategies to help minimize taxes, while your adviser identifies and executes the most appropriate investment strategies to help preserve and grow estate assets. You may also need to work with an accountant to prepare estate tax returns.

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