

EXECUTOR'S GUIDE FOR ESTATE ADMINISTRATION



The Law Offices
Of
Michael Cherewka

624 North Front Street
Wormleysburg, PA 17043
Phone: (717) 232-4701
Fax: (717) 232-4774
Email: mcestateplanlaw@earthlink.net
www.cherewkalaw.com

The administration and distribution of estate assets following the death of an individual will vary time and cost-wise depending on the structure of the estate (e.g. size, nature of assets, circumstances of the heirs, and whether estate is in trust or probate form, etc.) with the form of the estate (trust or probate) being the most substantial of the factors.

If a professional and comprehensive living trust plan has been created and maintained, the administration process is considerably earlier, less time consuming and much less expensive than probate.

In either event, some of the preparatory processes and the “do’s and don’ts” for the estates’ administrator are similar and must be completed before the assets can or should be distributed to the beneficiaries. Thus, the following will provide a list of recommendations and general guidelines for you as you serve as the administrator for either a trust or a probate proceeding:

1. Review organ donation instructions.
2. Attend to the memorial and funeral arrangements for the decedent if this has not already been done or is not being handled by someone else, and work with funeral director to prepare obituary.
3. Locate military papers and contact VA regarding possible benefits, including American flag.
4. Arrange for help as needed with children, pet care, cooking, telephones, house keeping during funeral, etc.
5. Arrange for after-service luncheon or reception for friends and relatives.
6. Arrange for cemetery lot, mausoleum or crypt as necessary.
7. Don’t make any rash decisions or act hastily regarding the distribution of any estate assets!

If assets are distributed without proper observance of possible tax liabilities, potential creditors’ claims or precise fulfillment of the trust instructions, the administrator could be held personally liable for the consequences.

8. Contact the decedent’s estate planning attorney (or if unknown or unavailable, another attorney who specializes in estate planning) and schedule an appointment to establish a professional relationship for guidance and direction to properly handle the estate administrator’s responsibilities.

This does not have to be done immediately, but is recommended within 20 to 30 days after the decedent’s death.

9. Create list of flowers, cards, donations and other expressions of sympathy.
10. The time preceding the attorney visit should be used to help settle the emotions that follow the death of a family member or close friend and to begin the accumulation of documents and information (described hereafter) that will be needed by the attorney.
11. Send notes to acknowledge expressions of sympathy.

Accumulation of documents and information:

Since the death tax return, if required, is due nine months after the decedent's death, the accumulation of documents, appraisals, etc. described hereafter should be completed as soon as possible either before or shortly after the first meeting with the estate's attorney.

A general description of what will have to be compiled and the steps or procedures for the estate administrator to do are summarized as follows:

- Obtain and organize all billings or other papers regarding the decedent's final medical treatments.
- Request several certified copies of the death certificate as well as such will be needed for various steps in the estate administration and termination process. Usually, 4 to 8 certified copies will be sufficient.
- All safe deposit boxes if there are any (hopefully in the name of the living trust – if there was a trust – so as to be readily accessible), should all be checked and all ownership documents, insurance policies and other important papers should be removed for delivery to and review by the estate's attorney. (This usually cannot be done until the estate administrator has a certified death certificate and appropriate pages form the trust as the successor trustee, or appointment by the court as the probate administrator to present to the bank.)
- Locate all original estate planning documents (trust, will, amendments, powers of attorney, etc.) that the decedent has. (If not found, the decedent's attorney usually has a copy.)
- If the decedent was living alone, the locks should be changed and other steps taken, if necessary, to close and secure the residence. If the residence will be vacant, the insurance carriers should be notified of the fact.
- Automobile insurance and any other pertinent insurance policies should be checked to be certain estate assets are insured against potential loss or liability.
- All life insurance policies should be located or searched out and then compiled for the eventual filing of the claims to recover the proceeds that would now be due to the estate or other beneficiary if one was named.

- A list of all household furniture and furnishings (by major items or categories) should be made, and to be absolutely safe if several beneficiaries are involved, photographs should be taken of the household contents or an unrelated and disinterested witness should be present when the list is made. The witness should then sign the list as to its accuracy and completeness. The list will also be of great help in keeping track of where personal property items are eventually distributed, and to provide a record of compliance with the terms of the trust, will or intestate requirements.
- All other assets of the estate such as automobiles, stocks, bonds, mutual funds, pensions, IRAs and other retirement funds, boats, plans and other vehicles, bank accounts, business or partnership interests, trust deeds or promissory notes payable to the decedent or the trust, etc., etc, should all be inventoried with a description of each and statement of value when the decedent died. If financial statements from banks or investment companies or similar items are available, they should be compiled as well.
- The names of all institutions or person holding assets should be included in the inventory with their address and phone number and, of course, the account numbers.
- *After* the inventory is compiled, it may become appropriate to consolidate whatever accounts exist depending on the terms and instructions found in the trust or will and to simplify eventual distribution to heirs and accounting of the monies as part of the administration process. However...this should not be done prematurely and is best deferred until after the first meeting with the estate's attorney, and possibly later.
- Whatever funds are received or disbursed to satisfy expenses or possibly as a partial distribution of the estate, the transactions must be promptly and accurately written into the check register book or other appropriate accounting record so as to be easily substantiated at a later date if ever challenged. This information is also very important for tax reporting purposes, since if records aren't kept showing where income came from and what expenses were paid, it's impossible to determine what income is taxable and what expenses are deductible.
- Although it is not necessary to pay any bills of the estate of the decedent immediately (and sometimes it's better to wait until everything settles before doing so), all bills should be gathered for evaluation as to their legitimacy and priority status, if any, for eventual payment. Sometimes, the estate administrator can be held personally liable for debts of the estate if the estate has funds to pay those debts, but fails to do so, or if the administrator distributes the funds in a way that should not have occurred. Thus, again, it is safest to determine outstanding liabilities and to complete the inventory of assets before making distributions to beneficiaries, since it is very awkward for an administrator to go back to beneficiaries and ask that the assets be returned.
- If the estate will generate income from the date of death until all assets are distributed, (which is generally the case), a tax identification number needs to be obtained for the estate. The estate's attorney will normally attend to that process.

- In other instances, or at least for part of the calendar year prior to the decedent's death, his or her social security number will continue to be all that is necessary.
- Income tax returns will probably be required for the decedent to the date of his or her death, which would be due the following April 15th just as normally required for individuals. However, there may also be a need to prepare and file a 1041 fiduciary income tax return for all income received by the estate after the decedent's death. The estate's attorney and whatever accountant selected to handle the estate administration will normally direct the administrator on all the accounting and tax return requirements.
- Some states require that the decedent's Will be filed in the Probate Court for safe keeping even though a probate process may not be required. Thus, if the decedent or the estate owned assets in another state, the filings of the Will in that state's probate court may be necessary.
- Once the above mentioned steps are completed and the exact status of the estate is determined, the estate administrator and the estate's attorney will be able to complete the final administration and distribution to heirs that may then be appropriate and called for in the trust, the will, or under the intestate laws. Sometimes, however, there will be need for on-going estate management for minors, life-beneficiaries, or provisions for distributions at ages not yet attained by the beneficiaries, if such is part of the trust or will structure.
- One important point to remember is that the beginning accounting and inventory established as of the date of death for the decedent must reconcile with the balances taken at the end of the administration period after adjustments for funds or assets received and distributions made during that time. The accounting may then show how assets on hand are to be distributed to beneficiaries based on the plan of distribution specified in the estate.
- When distributions are made, a written receipt and release form should be executed by each beneficiary to complete the record keeping and to protect the estate administrator from further responsibility or liability. Funds or assets should be distributed to the beneficiaries only when they have signed the receipt and release form. (Once distributions are made, it is much more difficult to obtain signatures, since it is no longer a priority for beneficiaries). Again, this is a function that will usually be handled or at least directed by the estate's attorney.

This may sound like a complicated and time-consuming job. However, it is required by law. And, again, if the estate was properly structured in a comprehensive living trust plan, the process will be considerably easier, faster, and substantially less expensive than probate. Also, the successor trustee as estate administrator will be able to access accounts for the estate immediately (once a death certificate is available), rather than waiting for authorization from the probate court.

Remember . . . , however, it is very important not to act without proper professional guidance, because to do so could easily cause the estate of heirs to lose out on many protections and/or tax benefits that might otherwise be available.

Final comments on inventories, accountings, and tax issues:

In preparing the inventory of assets, it is important to contact each institution holding assets to obtain date of death value, owner, beneficiary (if any), and other pertinent information in regard to the assets. In this way, specific ownership, and beneficiary designations, and other pertinent information can be determined before distributions are made.

It is not acceptable to take values off of statements, since the IRS has specific requirements for ascertaining date of death values, including calculating income earned to date of death even if income has not yet been credited to the account. Written verifications of values from institutions holding the assets or a record of the calculations will be very helpful in the event of an audit. A formal inventory also prevents errors, and keeps tax records clean.

The preparation of an inventory and a comprehensive accounting is also an excellent method of verifying how all the assets are actually titled so appropriate decisions and actions can be made.

The bottom line is that all the steps touched upon above are not only important from a legal stand point and the protection of the estate administrator, but also are necessary to fulfill the specific financial distributions, protections and other goals that were intended by the decedent in his or her living trust or will, or under the state's probate system.

CONCLUSION:

Use and follow the advice of the estate's attorney to avoid or reduce death or income taxes and to protect against personal liability for the estate administrator.

Don't act hastily or distribute assets of the estate without consulting with the estate's attorney.

Prepare an inventory and accurately account for all assets and funds that come into the estate.

Obtain receipts and releases for all distributions when they are eventually made and follow all instructions of the estate documents or probate laws in order that once the directed distributions are completed, remaining administration of the estate (if required for any heirs) will be able to continue without difficulty.