

GUIDE TO ESTATE ADMINISTRATION

Estate Administration Process

The decedent's last will and testament will need to be filed with the court regardless of whether probate is required. If probate is required, then the executor named in the will needs to file a petition to probate the will and to be appointed executor. If there is no will, then an administrator will be appointed after filing a petition. The estate administration process may be completed after a six-month claims period expires if no estate tax return is required to be filed. If an estate tax return is required to be filed, then the process can be completed after the IRS approves the estate tax return (typically 15 months to two years after the date of the decedent's death). Distributions of personal property may be made immediately. Distributions of the remaining assets may be made shortly before the estate administration is complete.

Independent Administration

Independent administration is a simplified procedure that allows the executor or administrator to administer the estate without close court supervision. Independent administration allows the executor or administrator to provide a detailed inventory and accounting to the family members without filing such information with the court, which would make such information a public record. If disputes arise as to the gathering of assets, the proper payments of debts and expenses, or the distribution of assets to the legatees who inherit under the will or heirs who inherit in the absence of a will, then independent administration can be terminated and supervised administration may be utilized.

Estate Checking Account

The executor will open an estate checking account in accordance with directions in a separate memo. The estate checking account will be the depository of all receipts and will be used for disbursements.

Property Not Subject to Probate

Assets, such as life insurance proceeds, that name a beneficiary (other than the estate) are not involved in the probate proceedings and may be paid to the beneficiary. Assets held in joint tenancy, such as a residence, an automobile, or a checking account, pass automatically to the survivor.

Claims Against the Estate

A claims notice will be published in the newspaper. Six months after publication, the claims of unknown creditors are barred. Notice should be given to ascertainable creditors. Please provide a list of known creditors to your attorney.

Decedent's Will and Trust

State law requires that the original will be filed with the county within 30 days of the date of death. Please deliver the original will to our office to be filed.

We will review the copy of the decedent's Will and, if applicable, the trust documents, and assist in answering any questions you might have about the distribution of assets. If it is necessary for you to establish a testamentary trust, special needs trust, credit shelter trust or any other trust, we can provide direction for this process as well.

Income Taxes

A final income tax return will be required to be filed for the decedent. The estate is a separate taxpayer. The employer identification number (EIN) for the estate is _____. The estate [and trust if applicable] will pass income through to the beneficiaries who will be taxed on the income.

Estate Taxes and Step-Up in Basis

A federal and state estate tax return [will] [will not] be required to be filed. If an estate tax return is required, the due date of the estate tax return is nine months after the date of death. An automatic six-month extension is available if requested within the nine-month period. Even if no estate tax return is due, it is important to have such property as real estate appraised to establish the new basis in the property that "steps up" upon the decedent's death.

Spousal Rights

A surviving spouse has a preferential right to receive a payment for reasonable support for a period of nine months following the date of the decedent's death. The amount is not less than \$20,000 if the spouse wishes to receive such payment. A surviving spouse also has the right to renounce (*i.e.*, reject) the will and take a statutory share of the probate assets. The surviving spouse is entitled to one third of the estate if the decedent had a surviving descendant or one half of the estate if the decedent had no surviving descendants.

Rights of Minor or Adult Dependent Children

A minor or adult dependent child who does not reside with the surviving spouse at the time of the decedent's death also has a right to an amount for support for a period of nine months after the decedent's death. The award will be no less than \$10,000.

Custodial Claims

A family member who lived with and cared for a disabled decedent for at least three years may be entitled to a statutory custodial claim. The amount of the claim is a minimum of \$180,000 for a 100-percent disabled person and lesser amounts for persons who are not completely disabled.

Disclaimers

For estate tax reasons, it may be desirable for a surviving spouse or children to disclaim (*i.e.*, refuse to accept) property from the estate. To disclaim property, the disclaimant must not accept any benefits of the property prior to the disclaimer.

Executor's and Trustee's Fees

The executor and trustee are entitled to fees as compensation for performing their duties. The compensation is taxable as income. Family members who act as trustee and executor will often waive the fees and allow the funds to be distributed through the estate or trust provisions.

Role of the Attorney

The attorney represents the estate and the executor or administrator. If any disputes arise or if family members are concerned about protecting their interests, then they may want to retain their own attorney.

The purpose of this guide is to provide you with a brief overview of the estate administration process. Our office can provide additional information as necessary.