

ASSISTING CLIENTS IN THE EVENT OF THE DEATH OF A FAMILY MEMBER

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You have just received a call from a client that a family member has passed away in the past week and they would like to meet with you regarding the steps of administration. Your first responsibility is to determine how you are professionally related to this matter and what type of assistance you are prepared to provide. Most CPAs are willing to provide overall guidance, support and assistance as well as prepare any tax filings that may be required for the estate. As far as the actual legal services related to estate administration, most CPAs refer such work to estate planning attorneys. The area of estate administration is ripe with potential malpractice issues so it is not recommended that you take on all the responsibilities associated with estate administration. The best approach is to work on an estate from a team perspective to be sure all areas are properly addressed and the family is properly served. In my practice, I find that with each estate, the best team includes a hard working family member (preferably the personal representative), a broker, an appraiser, and a CPA.

With the above disclaimer stated, we will now look at the steps of administration to simply provide you with a guideline as you generally discuss this with your clients. This is meant to serve as a general overview for your use in educating clients. Attached you will find copies of various court forms used with estate administration. We will refer to those forms during this discussion and in our case studies. I will divide this administration discussion into time frames as used in my practice. I will also assume that there is a last will and testament in place in that intestacy proceedings are beyond the scope and time allotted to this discussion. If there is a revocable living trust in place, then the second part of this presentation will outline the difference in administration.

The First Week

1. *Individual contacts your office regarding a death. Determine whether decedent and contact are clients and gather information on file regarding that client. If not a client, determine how the contact is related to the decedent and if said contact is the named personal representative of the decedent's estate. **BEWARE:** If contact is requesting information regarding a decedent-client, confidentiality is an issue.
2. *If an appointment is made regarding administration, send letter outlining items to bring to meeting which should include:
 - a. The original will of decedent and/or any original trust created by decedent;
 - b. An original death certificate;
 - c. A current listing of all known assets of decedent and how titled;

- d. Copies of all real estate deeds;
- e. Copies of all recent brokerage, banking statements;
- f. Listing of all family members;
- g. Information on all life insurance owned by decedent or where decedent is listed as the insured;
- h. Information on all annuity contracts owned by decedent or where decedent is listed as the annuitant;
- i. Information on all retirement contracts owned by decedent;
- j. Copy of decedent's birth certificate;
- k. Copy of decedent's social security information;
- l. Copy of decedent's veteran's information;
- m. Copy of all titled personal property (cars, boats, etc.);
- n. Information regarding any debts of decedent; and
- o. Copy of last filed income tax return.

Make sure there has been a full search of any and all original estate planning documentation. Determine if there is a safety deposit box and if so, where located and what included.

- 3. *Initial consultation to review the above information and determine the road of administration. If contact is the named personal representative, prepare necessary documentation to effectively become the personal representative.
 - a. Is this a small estate?
 - b. Can we use summary administration?
 - c. Do we need to open a full probate administration?
 - d. Do we anticipate any family issues?
 - e. Is this estate solvent?
 - f. Do we anticipate the need for the filing of an estate tax return?

It is also important to discuss protection of assets where applicable.

The First Month

- 1. *Complete all documentation necessary to become the personal representative.
- 2. *Continue gathering information on the decedent and the decedent's probate assets.
- 3. *Determine if the family is working with an estate planning attorney and if so, contact said attorney. If not, give the client information regarding the Clerk's office.
- 4. *Inventory safety deposit box.
- 5. *Review powers and responsibilities of the personal representative
- 6. *Gather and protect estate/trust assets
- 7. *Retain experts
- 8. *Determine value of non-probate assets

9. *Determine if there is a potential wrongful death claim
10. *Obtain tax identification number for estate/family trust (SS-4)
11. *Open estate/trust bank accounts
12. *Pay the year's allowance where applicable
13. *Activate or terminate governmental benefits
14. *Obtain prior tax returns
15. *Obtain death certificates
16. *Publish the Notice to Creditors
17. *Identify legal obligations of the decedent

The Second and Third Months

1. *Notify all known creditors
2. *Conduct ancillary administration if necessary
3. *Advise spouse of the right to dissent
4. File the Notice to Creditors Affidavit
5. File 90 day inventory

The Fourth through Ninth Months

1. *File tax returns
2. *Advise survivors of the right of renunciation
3. *Pay the decedent's debts
4. *Prepare for filing of death tax returns if needed and determine whether alternate valuation date is applicable. If so, obtain alternate valuations.

The Ninth Month

1. *Discuss partial distributions
2. *Discuss options regarding retirement accounts
3. *File death tax returns or extension
4. *Fund any exemption trust if applicable
5. *File memorandums of trust with Reg. Of Deeds if decedent's trust owns real estate in a county/state

The Months Thereafter

1. *Prepare receipts for beneficiary signatures
2. *Distribute the net estate
3. *Assist with the retitling of assets and proper allocation of taxpayer identification numbers
4. File the annual account or final account
5. Close the estate
6. *Prepare any income returns necessary for decedent and/or estate/trust
7. *Discuss future administration of exemption trust

If the decedent has a revocable living trust as well as a last will and testament, the administration of his/her estate will depend on the titling of probatable assets. If all such assets are titled in the name of the revocable living trust, there is no need for a formal probate administration. It is recommended that the last will be filed with the Clerk's office but no full probate administration is required. You must then turn to the trust document itself to determine the administration needed. Many of the same steps are still followed as outlined above there is simply no need to file inventories or accounts with the Clerk's office. I have identified the trust administration steps typically taken with an * beside each step.

If the decedent did not fully fund his/her revocable living trust, there may be the need for a partial probate administration as well as a trust administration. See case study for illustration.