

Guide for Personal Representatives

How to Navigate the Estate Settlement Process

Being appointed as a personal representative (executor) for a deceased individual's estate means taking on a great responsibility. And like many individuals in this position, this may be your first experience. This brief guide will help you understand what to expect and what you may be required to do.

After an individual dies, the probate court will appoint a personal representative to transfer assets the deceased owned to either:

- The beneficiaries named in the deceased's will
- His or her heirs as determined by state law if the deceased did not have a will

As a personal representative, you have an obligation to follow the terms of the deceased's will and a fiduciary duty to the estate and the beneficiaries named in the will. You will need to contact an estate planning attorney to help you understand your duties and help you through the probate process. You are not required to use the same attorney the deceased used.

A personal representative is primarily responsible for dealing with the deceased's "probate assets" – that is, assets he or she owned solely in his or her name. "Nonprobate assets" include:

- Trust assets, which are the trustee's responsibility
- Assets held in joint name, which will pass directly to the joint owner(s)
- Assets held in accounts with beneficiary designations, such as transfer-on-death (TOD), pay-on-death (POD), qualified retirement plan [401(k), etc.] and IRA accounts and life insurance benefits, which will pass directly to the named beneficiaries

Although dealing with nonprobate assets is technically not your responsibility, you'll see as you read on that you may find yourself playing a role in the disposition of these assets.

Even before the court appoints you as personal representative, you should begin the process of gathering information that will help you determine everything the deceased owned and all of his or her outstanding debts. You may not be the person who has the most direct access to the deceased's financial information, so you may have to work closely with the person who does — for example, the surviving spouse, partner or adult child. To begin the process, you should:

- Create a contact list of people at various institutions whom you are working with to transfer assets. Get each person's contact number and direct extension, if available. You will find that it will be helpful to ask for the same individual each time you call.
- Work with the trustee, if the deceased had a trust, and the person closest to the deceased to obtain information. You can find a great deal of information by checking the deceased's mail, reviewing checkbook registers and tax returns, going through desk drawers and files, and examining the contents of his or her safe deposit box. The law varies between states and between financial institutions with respect to who may be allowed access to a safe deposit box and under what circumstances. If you have difficulty, notify your estate planning attorney. Note: The deceased may have received statements from financial institutions electronically rather than by mail.
- Notify the trustee of any trust assets you uncover.
- Determine the appropriate care for pets owned by the deceased.

The estate planning attorney will prepare the documents that need to be filed with the court in the county where the deceased lived. You should anticipate that:

- The attorney will file the original will with the probate court in the county where the deceased lived.
- The attorney will submit an application to the court to open the probate estate and appoint you as personal representative. If there are no probate assets (everything passed to beneficiaries or heirs outside of probate), this may not be necessary. In that case, the attorney may not bother opening the estate, and there will be nothing more for you to do.
 - There may be reasons, such as creditor issues or beneficiary disputes, to open a probate estate even if there are no probate assets. Your attorney can guide you as to whether this is advisable in your situation.
 - Most states offer an alternative to opening a full probate estate if the assets in the probate estate are worth less than an amount specified by state law. This process is not as lengthy as the full probate process.
 - You cannot act as personal representative until the court grants either Letters Testamentary if the deceased had a will, or Letters of Administration if he or she did not have a will, which may take a few weeks. Once you have the appropriate document, you may begin transferring assets into estate accounts and then to the appropriate beneficiaries.
 - You may need multiple certified copies of the Letters Testamentary or Letters of Administration.
 - A tax identification number (TIN) for the estate will need to be obtained. This is a simple task that your attorney or tax advisor can complete. You can apply for a TIN using IRS Form SS-4 or online at [irs.gov](https://www.irs.gov) to expedite the process. Financial institutions will require this number to move assets into the estate's name. Also, it must be used on tax returns for the estate.
 - A checking account in the estate's name will need to be opened. Checks made payable to the deceased as well as proceeds from the sale of assets sold during the probate process can be deposited into the account. Also, the deceased's bills can be paid from this account, and specific bequests and final distributions as directed by the will can be made from here.
 - During this time, you will pay bills as directed by the attorney. Creditors may contact you about debts of the deceased. Direct them to call your attorney and/or notify your attorney before you pay them.
 - Provided the power is given in the will, you may have authority to sell property during the probate process. Consult with your attorney.
- The attorney will use the information you provide to prepare an inventory of the deceased's probate assets and file it with the court. If the deceased owned property in states other than the one in which he or she lived, probate estates may need to be opened in those states.
- The attorney will send notices to heirs and interested parties that the estate is open and you are appointed as personal representative.

- Probate laws vary from state to state. Don't be caught off guard if the attorney tells you that assets cannot be distributed to beneficiaries for a certain length of time. In general, probate estates need to stay open for a period defined under state law in order to give creditors time to come forward and file claims for assets.
 - During this time, certain assets may be distributed to a surviving spouse and minor children. Your attorney will be able to direct you on this point.
 - Before assets are distributed from the probate estate, you will want to maintain a cash reserve to pay expenses, fees and other taxes. Once the assets are distributed to beneficiaries, it may be difficult to get them back to pay these items.
- Once the appropriate time has elapsed, your attorney will guide you on how to distribute the probate assets. You will also want to work with the attorney and tax advisor to obtain detailed advice on the tax aspects of distributing the assets.
 - The will may call for distributions to be made outright to beneficiaries and/or trusts (credit shelter trust, marital trust, trusts for children, etc.) created upon the deceased's death. Each of these trusts will be separate entities and will require their own TINs. Your attorney and tax advisor can offer guidance regarding which assets would be most appropriate to fund which trusts and whether certain assets should be sold. The trustees of these trusts will handle the assets once they have been transferred.
 - You will need to provide beneficiaries with cost basis information. In general, assets deemed owned by the deceased will get a basis equal to the date-of-death value (this may vary for individuals who died in 2010). Also, assets received from the deceased are deemed to be held long term regardless of when the deceased acquired them.
- The attorney will prepare the final accounting of all the deceased's assets for the court.

Be sure to seek the attorney's guidance as to whether a federal/state estate tax return should be filed.

- Ask your attorney about the portability election.
- Get appraisals to determine values for estate tax purposes, if necessary.
- Work with the trustee to determine if the deceased has any unused exclusion amount left for portability.
- If the deceased's estate is large enough to be assessed an estate tax, ask your attorney and/or tax advisor about the six-month alternate-valuation date and whether it is applicable to your situation. It may result in a lower estate tax if the estate's value at six months after the date of the death is less than its value on the date of death. Keep in mind that probate assets are included in the estate value.

Contact a tax advisor for assistance in filing the deceased's last personal income tax return and estate income tax return, if necessary.

Contact your financial professional for a portfolio review of estate assets.

Take Care When Dealing With Required Minimum Distributions

If the deceased was older than age 70½, notify your attorney to ensure that any required minimum distributions (RMDs) from qualified retirement plans and traditional IRAs for the year of death and subsequent years are handled properly. If an RMD is not distributed as the law requires, a steep penalty could be assessed.

Dealing With Different Types of Assets/Accounts

Nonprobate assets. Strictly speaking, the personal representative is not usually responsible for transferring nonprobate assets. Such assets include those:

- Held in trust, transfer-on-death (TOD) or pay-on-death (POD) accounts
- That transfer by beneficiary designation (life insurance, qualified retirement plan assets, annuities)
- Held as joint tenants (although, if an estate tax is due, you will need to know these assets' value)

However, you may want to help with the transfer of these assets as a courtesy to beneficiaries. If you are aware of such an asset, you may contact the beneficiary to let them know they are the beneficiary or you may contact the institution to notify them of the death and provide them with the beneficiary's contact information. The institution will send the beneficiary the appropriate paperwork that will need to be filed. The beneficiary will have to submit this to the institution along with a death certificate in order to collect the assets.

You will be responsible for dealing with nonprobate assets in these situations:

- If the estate is named as beneficiary or no valid beneficiary is named, you are responsible for collecting the assets. As with any other beneficiary, you will have to fill out the appropriate paperwork, such as an Affidavit of Domicile and an Inheritance Tax Waiver, if applicable, and send a death certificate to collect the asset. You will also have to supply the institution with the estate's TIN.
- If the deceased named the estate as beneficiary or failed to name a valid beneficiary of an annuity or qualified retirement plan asset, you will be required to collect these assets. Since there are special tax rules that govern how these assets should be distributed, consult your attorney to determine how to proceed.

Personal residence. If the deceased owned a home that will be a part of the probate estate, you will need to see if the will provides any specific direction regarding what is to happen to it.

The recorder of deeds in the county in which the property is located will require specific documents, such as a new deed and certain affidavits, to be filed to transfer the property. Your attorney will guide you as to the type of deed and other paperwork that will need to be filed.

You may also need to:

- Determine who has the keys.
- Change the locks.
- Arrange for continuation of utilities.
- Maintain the property.
- Maintain homeowners insurance.
- Pay real estate taxes.
- Locate the deed and mortgage and loan information.
- Get an appraisal.

Other real estate. If the probate estate includes real estate other than the personal residence, you will again need to see if the will contains specific directions regarding what needs to happen to it. If the will leaves no specific direction, a decision will need to be made regarding how to dispose of the real estate. Questions that may need to be addressed include:

- Does diversification, needs of the beneficiaries or need for liquidity suggest a sale?
- Is it practical for the beneficiaries to own the property together? Are they interested in owning the property? Does one beneficiary wish to own the property?
- Other issues you may need to deal with include:
 - Who is the property manager? Should a professional be hired/engaged?
 - Are there leases to the property? If so, how should they be handled? Talk to your attorney about how lease terms affect what could/should be done.
 - If there is real property held in a state other than the one where the deceased lived, a probate proceeding may be required in that state.

Closely held businesses, partnerships and other business interests. These assets are complex, and the after-death management of such assets is often subject to agreements made between co-owners. Your estate planning attorney and/or tax advisor can help you deal with these assets. Some steps to take with regard to these assets are:

- Determine whether the will provides instructions as to what to do with a business interest — talk with your attorney to determine how to distribute it.
- Notify other business partners of the death.
- Locate stock certificates and other evidence of ownership.
- Locate the buy-sell agreement, if any, associated with the business interest.
- Determine if a life insurance policy was obtained on the deceased.
- Locate the organizational documents for the business, such as the articles of incorporation, bylaws, and the operating agreement or partnership agreement.
- Find out who has voting control/voting shares and who is in charge of operations.
- Determine whether the short-term cash flow is sufficient for operations.
- If the business was solely owned by the deceased, determine who should continue the business or whether it should be sold.
- Locate financial statements.
- Determine whether an appraisal is needed.
- Find out whether there are any outstanding business loans/personal guarantees.
- See if there are any business leases. If there are, determine what rights/obligations the estate has under the lease.

Other Considerations

If the deceased had minor children and no surviving spouse:

- The will should name guardians. If not, a court process will be required to name a guardian.
- Depending on state law, you can use estate assets to provide for the children until the probate estate is settled. Typically, there are statutory limitations on the amount of property that can be used.

If the deceased had a special needs child:

- Notify the trustee if a trust exists to provide support for the child.
- Be careful making any distributions directly to a special needs child — consult an attorney. A special needs trust may need to be established.
- For adult special needs children, the court may need to appoint a guardian or conservator if the child does not have the capacity to make his or her own decisions. Questions that may need to be addressed include:
 - What services, help or support did the deceased parent provide the child?
 - Is there an alternate caregiver who can take on these roles?

Finding the answers to these questions may not be part of your duties as personal representative but are practical issues that surviving family members need to think about.

Consult Your Tax Advisor and Estate Planning Attorney

This information is designed to provide general information regarding the estate settlement process, but it is not exhaustive. We encourage you to work closely with your tax advisor and estate planning attorney during this difficult time.

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