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ATTORNEYS AT LAW

Wisconsin Personal Representative
Instructions



ESTATE ADMINISTRATION

PERSONAL REPRESENTATIVE INSTRUCTIONS

As personal representative of an estate, you will be responsible for a wide variety of duties. The following is a summary of such duties, as well as instructions to assist you in administering the estate. This information is intended to serve as a reference. Questions are welcome and encouraged. Responsibilities of the personal representative include:

- ▶ Collection, inventory, and appraisal of assets
- ▶ Protection and preservation of assets
- ▶ Payment of taxes and debts of the decedent and his or her estate
- ▶ Distribution of the remaining assets to the proper parties as specified by law
- ▶ Closing the estate

Here is an overview of things a Personal Representative needs to consider:

Timing Considerations

Will filing

If the person who dies had a Will or Last Will and Testament, by state law, you must file the original with the Register in Probate within 30 days of obtaining knowledge you have been named personal representative even if no actual probate process is required.

Appointment of Personal Representative

Informal proceeding – after mailed and published notice (usually within three to four weeks after Application is filed).

Formal proceeding – after a hearing on the Petition. Hearing requires mailed notice at least 20 days in advance of the hearing date.

Timing Considerations (cont.)

Closing the Estate

The estate should not be closed until all aspects of administration are completed. Some of the factors to consider are:

▶ **Notice to Creditors.**

Prior to closing an estate, the notice to potential creditors must be given and the time period for filing of claims must expire (three to four months from date of the Order). In solvent estates, claims which are not contested should have been paid. In insolvent estates, the personal representative will probably want to close formally to obtain a decree showing how the remaining assets are to be allocated. Contested claims should be resolved in proceedings prior to filing documents to close the estate, although under certain circumstances it may be possible to have the court rule on claims as part of the closing of the estate.

▶ **Collection of Assets.**

All assets of the estate must be collected and inventoried. If there are delays in collection of assets (due to contingent claims or litigation, for example), the personal representative may seek an interim decree of partial distribution to distribute other assets to the heirs or devisees. An Inventory will need to be prepared and filed with the court pursuant to estate deadlines issued by the Register in Probate or judge.

A second document is also prepared in connection with the collection of assets, i.e. the Final Account. When compiling the documents to close an estate, the Final Account can become one of the most time consuming.

▶ **Real Property.**

If the estate contains real property, disposition of such property must be determined, (i.e. sale or distribution).

Tax Considerations

▶ **Estate Taxes**

If an estate tax return is required, an estate should not be closed until the closing letters are received from the Internal Revenue Service and any state in which an estate tax return was filed. The estate tax return is due nine (9) months from the date of death.

▶ **Income Taxes**

Final Return. The decedent's final income tax return must be prepared and any tax liabilities paid. The decedent's final income tax return is due April 15 of the year following the year of death.

Fiduciary Return. Income tax considerations for the estate and the beneficiaries may accelerate or delay asset distributions and estate closing. Preparing an income tax summary can assist in determining whether the estate's final fiduciary income tax return will reflect income or excess deductions and the income tax consequences to the estate and beneficiaries. As a result of the summary, one may want to delay closing an estate until the following fiscal year to better utilize excess deductions, or to delay the recognition of income. The fiscal year for an estate ends on the last day of the month preceding the month of death.

Here is a more detailed look at the Personal Representative's duties:

Appointment Procedures

A petition or application to administer the estate, along with all accompanying documents, must be filed in the county in which decedent resided on date of death. Legal notice by U.S. mail will be given to all heirs-at-law, and to all persons named in the Will, if there is a Will. Notice will also be given by publication in a legal newspaper for three successive weeks. If a court hearing is required, the petitioner/applicant must attend the hearing.

As soon as you are appointed personal representative by the court, the court will issue Domiciliary Letters. The Letters are evidence of your appointment as personal representative and your authority to act on behalf of the estate. If immediate action is needed on your estate the court can appoint a special administrator while the informal probate is pending.

Assets

There are two types of assets, probate assets and non-probate assets.

- ▶ **Probate assets** are those assets which are registered in the decedent's name only.
- ▶ **Non-probate assets** are those assets which are owned or held by the decedent and which name a joint owner or beneficiary, or those which contain a POD (payable on death) or TOD (transfer on death) clause. These assets pass directly to the joint owner or beneficiary outside of the probate proceeding. The joint owner or beneficiary is responsible for reporting income relating to a non-probate asset earned or paid after the date of death. Non-probate assets must be identified by description and date of death value for purposes of computing the decedent's gross estate. The surviving joint tenant or beneficiary will need a certified copy of the decedent's death certificate in order to collect a non-probate asset.

Estate Tax Identification Number

In most cases, the estate will need to obtain a tax identification number (TIN). The TIN is used for estate purposes **in place of** the decedent's Social Security number. **Do not** use the decedent's Social Security number in connection with the administration of the estate, and **never** use your personal Social Security number when acting on behalf of the estate.

Estate Checking and/or Savings Account(s)

Once your appointment as personal representative is effective, you should open an estate checking account. You will need the TIN assigned to the estate in order to open any account on behalf of the estate, as well as a certified copy of the Letters. In some cases you may also need a copy of the death certificate. It is not necessary to order special "estate" checks; the type used for an individual account is acceptable for the administration of the estate.

All expenses in connection with the administration of the estate should be paid from the estate checking account, and all estate income should be deposited to this account. Income and expenses should be detailed in a check register. You should retain a copy of all bills paid, as well as a copy of all checks presented for deposit. Do not pay expenses from your personal funds and **do not use cash** to pay expenses.

In certain situations it may be appropriate to open an estate savings account in addition to the estate checking account. All deposits should be made first to the estate checking account and then transferred to the estate savings account.

Estate accounts should be registered according to the following example:

John R. Doe Estate
Mary Doe, Personal Representative
123 Personal Representative's Street
City, State and ZIP Code

Decedent's Personal Bank Account(s)

Unless you are named as a joint owner on the decedent's account(s), you do not have the authority to sign checks on such account(s). If you had authority to sign checks pursuant to the terms of a Power of Attorney, your authority terminated on the decedent's date of death. Any account(s) in the decedent's name alone (for which there is no beneficiary designated), or a POA account, should be closed and the proceeds deposited into the estate checking account.

Real Estate

You will need to arrange for lawn care, snow plowing, etc. while any real estate is held by the estate. You should also consider adding a vacancy addendum to the decedent's homeowner's policy if the property will remain vacant for an extended period of time. In the event cash is not readily available, you may need to inform utility companies and other creditors of the decedent's death and advise that payment will be made once the personal representative is appointed and/or funds are available. You will also need to see that real estate taxes are paid when due. **After** the property is either distributed or sold, you will need to cancel any homeowner's insurance on the property and request a refund of any unused portion of the premium.

Decedent's Mail

You should contact the Post Office to arrange for forwarding of the decedent's mail to your address.

Claim Period

The claim period allowing creditors to file a claim against the estate is 3 or 4 months from the date of the probate court notice. The estate will need to remain open during this 3 to 4 month period. A claim may be presented to either the court or the personal representative. The attorney will need to be notified of any claim presented.

Personal Representative Fees And Expenses

You are entitled to reimbursement for expenses (mileage, long distance charges, etc.) incurred by you as personal representative of the estate. In addition, you are entitled to reasonable compensation for serving as personal representative; you should discuss this matter with your attorney. Personal representative compensation is taxable income to the recipient for the year in which it is paid (a FORM 1099 will be issued when applicable). You must keep a detailed register of your time and expenses if you intend to charge the estate for your services.

Interim Distributions

Interim distributions **must** be discussed with the attorney **before** any funds or assets are distributed. In some cases, court approval may be necessary. The personal representative will be held personally responsible and accountable for any improper distribution of assets.

Inventory

A document detailing the assets and date of death value must be completed. An inventory of both the probate and non-probate assets is needed for computing the decedent's gross estate. All residual devisees/distributees are entitled to a copy of the inventory.

Final Account

At the conclusion of the administration of the estate, a Final Account will be prepared. This document will itemize all income and expenses of the estate, interim distributions and claims (if any), and show the balance on hand for residual distribution.

Statements for all estate accounts (checking, savings, brokerage, etc.), detailed account register(s), paid bills, cancelled checks and detail of each deposit will be needed in order to prepare the Final Account. The Final Account is filed with the court and a copy provided to all residual devisees/distributees.

Distributions

Upon completion of the Final Account, final distribution can be made. Each recipient of assets may be asked to sign a receipt. The receipts will be filed with the court.

Tax Returns

▶ Individual Income Tax Return (Form 1040)

You will need to determine if the decedent is required to file a final individual income tax return covering the period from January 1 of the year of death to the date of death. Such return is due no later than April 15th of the following year.

▶ Fiduciary Income Tax Return (Form 1041)

If the estate earns more than \$600.00 of taxable income or if there is a real estate sale, a fiduciary income tax return will be necessary. Therefore, it is important that the attorney receive copies of asset information from date of death to the date of closing or date of distribution. The residual devisees/distributees will receive a Schedule K-1 (Beneficiary's Share of Income, Deductions, Credits, etc.) showing their proportionate share of any excess income or deductions passing to them from the estate. The Schedule K-1 is applicable to the recipient's individual income tax return. The fiduciary return is based on a fiscal year which ends on the last day of the month which preceded the month of death. In no case can the fiduciary return cover more than a 12-month reporting period. In cases where the administration of the estate requires more than 12 months, a fiduciary return will be filed for each fiscal year. The fiduciary return is due three and one-half months after the close of the fiscal year.

▶ Estate Tax Return (Form 706)

If the gross estate is in excess of the unified credit applicable to the year of death, an estate tax return is necessary. The gross estate is determined by using the value of **all** assets (probate and non-probate) on decedent's date of death. The estate tax return is due nine months from decedent's date of death.

▶ Gift Tax Return (Form 709)

If the decedent made any gifts during the three years prior to his/her date of death, a gift tax return may be required.

Closing The Estate

Unless there are unusual circumstances, the average administration of an estate takes about one year from the time the personal representative is appointed.

We are here to assist you during the administration of the estate. If you have any questions or concerns, please do not hesitate to contact us.



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