

## FAQ'S ABOUT....

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## **WHAT DO I DO NOW?**

Coping with the loss of a loved one is always difficult. Your fear and anxiety can stem from many unanswered questions about your future and finances. Going through probate, dealing with a lawyer and making financial decisions may be overwhelming. This pamphlet is designed to answer some of the questions that you may have about the estate administration process, taxes and probate.

### **After the death of my spouse or family member, what do I need to do first?**

The first steps that are taken after the death of a loved one are as follows:

- Notify family members, friends, church and next of kin.
- Meet with the funeral home to make the necessary funeral arrangements.
- Locate the Will to determine who is listed as the executor of the estate and whether any funeral instructions have been included in the Will or attached to the Will.

### **I have a power of attorney; can I still use it?**

No, when a person dies, the power of attorney terminates. The attorney-in-fact has no legal authority to transact business on behalf of the decedent. Once the Will is admitted to probate, the executor has the legal authority to act for the estate.

### **Will bank accounts be frozen?**

Banks and other financial institutions will freeze accounts in the name of the decedent alone. Joint accounts with a spouse are not frozen and are available in full. Banks will learn of the person's death through the death notices reported in the newspaper. Joint accounts, where there is no surviving spouse, require a tax release (on accounts over \$25,000) and a death certificate to get the accounts unfrozen. If there is no surviving spouse joint account holder, then in addition to the tax release and death certificate, a probate court order will be required to get the accounts unfrozen.

## **Will the safety deposit box be frozen?**

No, the state no longer freezes safety deposit boxes. If only the decedent is on the box, you will need an order from the probate court to prove you are the executor to gain access to the box.

## **What happens if there is no Will?**

State law determines where the assets are distributed. The probate court will appoint a person (usually a family member) to be the administrator of the estate. The administrator will then distribute the assets according to state law. For example, if the surviving spouse is also the natural parent of the decedent's adult children, he or she will receive the entire estate. If not, then he or she will receive anywhere from the first \$20,000 to \$60,000 plus 1/3 to 1/2 of the balance. The rest goes to the decedent's children. If there is no Will, a bond must be posted by the administrator. A bond is an avoidable expense that simply adds to the costs of administration.

## **Will the estate go through probate?**

Whether an estate goes through probate or not, depends on how the decedent held assets and what types of assets were owned at the time of death. Certain assets have to go through probate, other assets do not. The assets that avoid probate are as follows:

- Jointly held property with right of survivorship;
- Life insurance and annuities;
- Retirement plans, IRAs and pensions;
- Assets in a Living Trust at the time of someone's death;
- Payable on death accounts;
- Transfer on death deeds and automobile titles.

All other assets listed in the decedent's name alone must go through probate.

However, if total assets are less than \$100,000 and are left to a surviving spouse, then the estate may be eligible for an expedited probate administration. This expedited process is called a "Relief from Administration" which takes about four weeks to accomplish, as opposed to the typical six to 12 months (or more) for a full administration. Assets left to anyone other than a spouse can be relieved from administration if they total \$35,000 or less.

## **What is Probate?**

“Probate” is legal proceeding supervised by the probate court, in which the decedent’s probate assets are administrated and distributed to the decedent’s heirs. The probate court makes sure that the terms of the Will and state law are properly carried out.

## **Will I have access to assets during the probate administration?**

Estate assets are available to pay all bills, debts, claims and expenses of the decedent. Assets like real estate may be sold. Partial distributions can be made to beneficiaries after the Will contest period expires (three months). Final distributions can be made after the estate taxes are filed (nine months) and creditor claims expire (six months).

## **What are the steps of Probate?**

- File the Will with the probate court;
- Send notice of the filing of the Will to all persons listed in the Will and those who would inherit if the Will was invalid;
- Have the executor (or administrator where there no Will) appointed. Once appointed, the probate court issues an order called “Letters of Authority;”
- Appraise and value the assets;
- File an inventory listing the assets in the probate estate;
- Send notice of the filing of the inventory to the heirs;
- Have a hearing if any beneficiaries object to the inventory;
- Resolve Will contests, if any;
- Resolve creditor claims, if any;
- File estate tax returns;
- Transfer assets to the heirs;
- File a final account showing all distributions from the estate.

## **What is the timetable for an administration?**

Typically, the estate administration process takes approximately six months to one year. More complicated estates may take longer. The timetable in Ohio for the various probate tasks are as follows (timetables in Kentucky and Indiana will vary slightly):

- One month - file the Will and have the fiduciary appointed (i.e., the “executor “ if there is a Will, or the “administrator” if there is no Will)
- Three months - Will contest period ends and the “inventory and appraisal” is filed
- Six months - creditors must make claims
- Nine months - estate tax returns are due
- Six months to one year (or more) – make final distributions to the heirs and file the “final account”

### **What happens if the decedent owned real estate in another state?**

In addition to a probate administration in the state in which the decedent resided, an ancillary administration will occur in any other state in which the decedent owned real estate.

### **What are the costs and fees associated with a probate administration?**

The actual costs and fees will depend upon the size of the estate, the nature of your assets, and the attorney that you retain to represent the estate. Additional issues may arise that could increase the cost of administration, including Will contest, estate tax audits, or the transfer of difficult assets such as closely held family businesses, or out of state real estate. Attorneys charge either an hourly rate or a percentage of the estate. The typical percentage ranges between 2% and 4 1/2 % of the estate. An attorney that charges on an hourly basis will typically charge \$175 - \$300 per hour. You should ask the attorney how he/she charges and for an estimate of the cost.

### **What is the role of the executor?**

An executor (or an administrator if there is no Will) of an estate is the person who is responsible for the administration of the estate. They must identify and evaluate the assets. They must also identify and pay all liabilities. They are responsible for selling the assets that need to be sold, and for signing the final income tax and estate tax returns. Finally, the executor distributes the assets in accordance with the terms of the Will or state law if there is no Will.

### **What does an executor get paid?**

State law sets the executor's fee. It ranges between 2% and 4% depending on the size of the estate.

### **Will the estate have to pay estate tax?**

This depends on the size of the estate, and the nature and extent of any estate planning that was done. If everything is left to a surviving spouse, there is no estate tax because of an unlimited marital deduction. Estate tax returns must be filed even though no tax is due. If assets are left to anybody other than a surviving spouse, estate taxes are paid to the federal government if the estate exceeds \$1,500,000. This figure will increase up to \$2,000,000 by the year 2006, and \$3,250,000 by the year 2009. In addition, Ohio, Indiana and Kentucky each have their own separate systems for taxing deceased residents.

## **When is an income tax return due for the decedent?**

A final income tax return is prepared for the decedent for the period beginning January 1 through the date of death. All income received during this period is reported on the final income tax return which is due on April 15 of the next year. The surviving spouse is still entitled to file a joint income tax return even though his/her spouse died during the year. All income earned after the date of death is reported on the income tax return for the estate or trust.

## **How do I locate assets?**

The executor will typically locate assets by going through the decedent's personal records and mail, a review of the past two years income tax returns, and a review of canceled checks for the past year. You can also locate assets by talking to the decedent's accountant, financial planner, stockbroker, or attorney who may be familiar with the decedent's financial affairs.

## **How are assets valued?**

All assets owned by the decedent as of the date of death are valued at fair market value. Therefore, many assets like real estate, closely held family businesses, antiques, and collections need to be appraised by a professional appraiser. Stocks and bonds are evaluated by looking at the stock market on the date of death. Bank accounts and certificates of deposit are determined by looking at the balance as of the date of death.

## **How are automobiles in the decedent's name transferred?**

A surviving spouse is entitled to two autos outside of the probate process. The two autos are transferred to the surviving spouse with a death certificate and an affidavit. Additional autos have to go through probate. Auto titles may now be registered with a "Transfer on Death" beneficiary. Autos with a "Transfer on Death" beneficiary designated on the title also avoid probate.

## **How is life insurance collected?**

Life insurance is collected by contacting the insurance company who held the life insurance policy. The insurance company will send a claim form which must be filled out and signed by the executor or surviving beneficiary. The claim form must be returned with the insurance policy and a certified copy of the death certificate.

### **Am I entitled to any benefits from my spouse's employer?**

Frequently, employers will have death benefits as part of a retirement package. Additionally, insurance, health plans and dental plans can sometimes be continued. A surviving spouse should contact the decedent's employer to determine what benefits might be available.

### **Am I entitled to social security benefits?**

A surviving spouse or dependent child may be entitled to social security. The executor needs to contact the Social Security Administration to stop the decedent's social security payments and to determine the rights of the spouse and minor children.

### **How are retirement benefits and IRAs collected and are they taxable?**

Retirement benefits and IRAs are not part of the probate estate. They are paid directly to the named beneficiary outside of probate. They are subject to both estate taxes and income taxes. Because the beneficiary may be entitled to delay the payment of income tax, it is extremely important to consult with your attorney before you withdraw any money from the retirement account or IRA.

### **Legal Disclaimer**

This brochure is being provided as a general outline of frequently asked questions. Nothing contained in this brochure constitutes legal advice. Nothing herein should be construed as or relied upon as legal advice.