HIGHTOWER
Westchester

Handling an Estate℠

PROFESSIONAL GUIDANCE WHEN YOU NEED IT THE MOST

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It has been almost two years since my husband's death. I am beginning to feel a sense of peace. I am grateful for the support of my financial advisors, my attorney and my CPA. The white paper, "Handling an Estate," is remarkable in its precision and completeness. It will be extremely helpful to all who read it.

– GERALDINE S.

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Introduction

A spouse, parent or other loved one has passed away: what do you do? Where do you turn for help? How do you deal with the overwhelming emotions of the moment? What do the next few days, weeks, and months look like?

This white paper will examine one of the most painful times in your life. It will guide you through the practical steps you'll need to take after someone close to you passes away, including the detailed financial and legal actions that are necessary. Some things will have to be attended to immediately — others can wait: it's important to know the difference.

> "As I attempt to recall the days immediately following the death of my husband, my memory is somewhat hazy. Although I moved steadily ahead with the guidance of my attorney, CPA and financial advisors, the underlying pain, sense of loss and aloneness is beyond description. I felt as though I had lost part of myself and would never again feel the joy I had known. Feeling fragile, I wondered if I would ever again experience the confidence, clarity of thought and certainty of good judgment I had known. I did, however, know that I would move at my own pace on major decisions. In retrospect, I was so very fortunate to have a team: an attorney, a CPA and financial advisors, in whom I trusted. Their knowledge and advice sustained me and was invaluable."
>
> — GERALDINE S.

Trying to deal with financial and legal affairs after the loss of a loved one can be challenging on many levels. You may feel as though the loss isn't real or feel confused and forgetful. Trying to concentrate on business matters can be difficult, especially if the specifics of managing an estate are new to you. Some people who experience the loss of a loved one often feel that they have no place to turn. You may find yourself crying at unexpected times or feeling angry or often preoccupied with thoughts about the person who died. It is not unusual to feel guilty or regretful for things you think you should or shouldn't have done. Sleeplessness and loss of appetite is not unusual. You may feel a need to tell and retell stories about the life and death of the person you lost. Sometimes you might worry that you are losing your mind. You are not. These are all natural and normal responses to grief.

Immediate Steps

The days that follow a death are difficult. It is important to follow some important practical steps. This section will focus on the more immediate tasks, including gathering the following:

1	The original will and/or trusts (note: it's important NOT to remove the staples)
2	Copies of the will and/or trusts – so you can make notes
3	Most recent bank, brokerage, and other financial statements
4	Retirement account statements
5	Pension statements
6	Social Security statement
7	Benefit statements
8	Life insurance policies (and trusts that may own them)
9	Veteran paperwork
10	Any designated beneficiary forms for retirement accounts, annuities, life insurance, and the like.
11	Other trusts in which the deceased was either a trustee or beneficiary, any partnership agreements, and any corporations in which he/she had an interest.

Once you have these documents in hand, call your attorney, CPA and financial advisor/s to schedule a meeting. In this meeting, you will all review the next steps that are necessary. As professionals, this is probably not their first time settling an estate – they can help you coordinate the maze of legal, accounting, and investment issues ahead. Don't worry if you don't have all of the above information immediately available. Your advisors understand that it might take some time to get everything assembled and that you might be overwhelmed.

Breaking Down Roles

Why do you need an entire team to take care of one estate? Each of these three professionals – attorney, CPA and financial advisor/s – has a very specific role in the handling of the estate: the better they work together, the easier your life will be.

THE ATTORNEY

The attorney will begin, and oversee the legal process to make sure everything goes smoothly, including:

- Getting the will admitted to probate (see page 16) and the executor (referred to as an executrix for a female) appointed through the local surrogate's or probate court.
- If you have a revocable trust-based plan, the attorney will prepare paperwork to allow the next trustee to take action.
- Applying for a Tax Identification Number from the IRS (sometimes done by the CPA).
- Coordinating any trusts that need to be created as directed by the will or revocable living trust (i.e. a trust for the surviving spouse or a young beneficiary).
- Helping with the final distributions, and ensuring that before any distributions are made, each beneficiary of the estate signs a release form. This is an important step as it releases the executor of the estate from future liability: never give a beneficiary his or her inheritance without a release as they could come back and sue the estate and the executor (more on heirs on page 19).
- Filing any disclaimers, if necessary.
- Formally close the estate with the court.

Ask for an explanation of all the fees in writing so that you understand the fees and how they will be charged to the estate.

THE CPA

First and foremost, your accountant or CPA's role is to handle any estate, gift and/or income tax filings. Here's some information on the CPA/accountant's role:

- Currently, the estate and gift tax on a federal level is only owed on estates greater than $12.06 million. See page 22 for more information on the current estate tax laws.
- However, most states that still levy an estate tax have a much lower threshold than the federal limit, so while there may be no federal estate tax owed, your estate could owe state estate taxes.
- Federal estate taxes are due exactly 9 months from date of death, whether or not the estate has the cash to pay them; certain extensions are allowed for estates with private businesses. States have their own timeline for when the taxes are due.
- If inheritance taxes (which are different from estate tax) are due, they may be due even sooner than 9 months — your accountant will know these timelines.
- Even if the estate is below the $12.06 million threshold, if you want to later elect something called "portability," (see page 23), filing a timely federal estate tax is mandatory to get this often-fruitful tax benefit later.
- Don't forget to ask about the fees and how they will be charged to the estate.

An estate tax return is largely a listing of all assets owned by the decedent at the time of his or her passing. Each and every asset, even those that don't pass through probate (a court proceeding that deals with wills, trusts, guardianships, and other estate matters; see more about probate on page 16), must be valued as of the date of death. For securities (stocks, bonds, mutual funds, etc.) this is a fairly easy and routine task, usually done by the financial advisor. For other property — like real estate, artwork, jewelry, cars, and businesses — an appraiser needs to be involved for valuations. While a stock can be easily valued, a piece of raw land, a privately held business or a home is a more subjective process. Work closely with your CPA, who will likely be able to recommend experts who can value these assets and provide a written appraisal (more on this on page 22).

This is not the time for a "no one will ever know" approach — as the fiduciary of the estate, you will be signing the tax return and can be fined (or even worse!) if you leave out assets or falsify values. As the saying goes: don't mess with the IRS.

Lastly, the role of the CPA is to file the final income tax return for the deceased, as well as file income tax returns for the estate and/or trusts that may result from the estate.

Key Titles

ADMINISTRATOR:
A person appointed by the court when the decedent does not leave a will.

BENEFICIARY:
The person named (as in an insurance policy or will) to receive proceeds or benefits.

EXECUTOR/EXECUTRIX:
The person appointed by the probate court to administer an estate.

HEIR:
One who receives or is entitled to receive some endowment or quality from a parent or predecessor.

TRUSTEE:
A natural or legal person to whom property is legally committed to be administered for the benefit of a beneficiary (as a person or a charitable organization).

THE FINANCIAL ADVISOR

The financial advisor is critical, as he or she has the job of opening the estate and trust accounts. For a will-based estate, this can only be done once the will has been probated, the executor has been appointed, and a Tax Identification Number (TIN) has been issued by the IRS. For a revocable trust-based estate, new accounts can be opened rather quickly since we don't need court involvement. Once the new accounts are established, all of the decedent's liquid assets, stocks, bonds, ETFs, mutual funds, etc. are transferred from his or her individual name into the name of the estate (or trust) with the executor (or trustee) being the person in charge of the assets (more on trusts on page 15). You will work with your financial advisor on the management of these assets once they are in the estate account(s).

The other role the financial advisor plays is to value all of the above liquid assets as of the date of death. Most advisors don't charge for these evaluations, but it is a good idea to ask in advance. Once the estate accounts are established, the financial advisor, with the input of the executor or trustee, can continue to manage the assets in a manner that is appropriate considering the goals and objectives.

As with the other professionals in your team, remember to ask about the fees and how they will be charged to the estate.

THE ROLE OF EXECUTOR OR EXECUTRIX

According to the legal definition, the executor is appointed by the probate court (also known as the Surrogate's Court) to administer an estate. He or she is nominated in the decedent's will, but the court will make the ultimate determination.

"I had no idea it was going to be this much work," is a common revelation from those who are settling an estate; the fact is that serving as the executor is indeed a lot of hard work and it's important that you are aware of the intense labor involved from the outset.

Tax Implication Alert!

The executor fees that are received count as income, so you must declare it on your income tax returns.

Some of the often-difficult tasks an executor undertakes include:

- Coordinating the activities of your professional team — attorney, CPA and financial advisor/s (getting them to work together effectively can save a lot of time and headaches).
- Gathering and accounting for all assets owned by the decedent in the early phase of the estate.
- Collecting all of the debts and bills (including estate and/or income taxes) and making sure they are paid before distributions are made to beneficiaries.
- Ensuring that all of the wishes of the decedent are carried out according to the will.
- Distributing the estate as per the will: ultimately if the dictates of the will are not followed, or the estate taxes are not filed, or creditors are not paid, it is the executor who will bear the responsibility.
- Securing and maintaining the physical assets from ruin and/or theft.

For their time, executors are allowed to collect a fee (usually referred to as a commission) that is typically set by each state as a percentage of the estate. For most people, while this may be a labor of love, it is indeed labor and a significant amount of hard work: financial remuneration will certainly be well-deserved. Trustees are also entitled to commissions as well, although the rules on how much the trustee is paid vary widely from state to state.

IMPORTANT: *the executor and trustee commissions count as income, so you must declare them on your income tax returns. Not everyone takes their fees, but keep in mind that the fees are tax deductions for the estate, so sometimes it makes sense to take them. A common mistake many executors make is telling beneficiaries at the start that they will not take any fees. They later regret this once they realize how much work and responsibility is involved. You should speak with your advisors before accepting or refusing your commissions.*

Take Your Time

As you can see, there is much to be done and a short period of time to do everything that is required. While it may be tempting to make lots of decisions quickly (especially when beneficiaries are breathing down your neck), it is strongly encouraged not to make any decisions until you assemble your team of professionals and involve them in every decision. There is no prize for being the fastest person to settle an estate. Top tips include:

- **DO NOT MAKE ANY DECISIONS THAT CANNOT BE EASILY REVERSED.** Do not make new investment decisions, buy insurance, or annuities. These types of investments, while they may be good in general, are not easy to reverse without penalty or cost.
- It's okay to make decisions to buy or sell securities, stocks or bonds, but only do it if your advisor absolutely thinks it is important and can't wait. If it can wait…let it.
- The will may include language to help reduce estate taxes, but tax planning could be easily destroyed by moving money into a beneficiary's name rather than into a trust. Again: take your time and seek out consultation from your team of professionals.

When you are in a fragile, emotional state, it's easy for others to take advantage of you. Rely on the professionals: they know what to do and have done it before. Many attorneys TV advertisements rightly declare: "this may be your first estate: but it's not ours." The professionals on your team can help you prioritize the decisions that need to be made immediately versus the ones that can be put off and made in a few weeks or months.

Death Certificates

The death certificate is the official document that is issued after someone passes away. It is vital that the decedent's death certificate be accurate. Make sure someone proofs the information being provided and then the certificate itself carefully. Errors are made (especially with the spelling of a name or the Social Security number) due to grief and the speed at which everything happens. A death certificate with wrong information is useless and it can take weeks to receive corrected ones, so it's important to focus on the details.

As soon as you make sure the death certificate is correct, it is strongly recommended that you order at least a dozen certified copies, either from the hospital or funeral home. You will need extras for a variety of reasons (cited throughout this paper), and most require an original with a raised seal.

Any and all financial firms where the decedent had an account — e.g. banks, brokerage firms — that were in the possession of the decedent at his or her passing, will also require a death certificate, so get extras now — it will save time later. Additionally, paper stock or bond certificates need a death certificate to have them deposited into the estate account along with other documents mentioned on page 16.

Delving Deeper

Advance Directives

Before we get into the myriad of details surrounding settling an estate, let's take a look at advance directives and touch on The Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Advance directives have several components, including:

- A health care proxy: In New York state, a health care proxy is a document that allows you to name individuals who can make health care decisions for you in the event that you are unable to make these decisions for yourself.
- Living wills and organ donation are advance directives that provide guidance to others about the types of decisions you would like made under specific circumstances, i.e. terminal or irreversible illness.
- Your health care proxy or agent is the individual designated as the person to make your health care decisions. If the person who recently died was your health care proxy or agent, you will need to select another individual as agent or as an alternate agent. Considerations for choosing a health care proxy or agent include the type of relationship you have with them. Consider these questions:
  - Does this person know you well enough to know what your wishes might be?
  - Have you had, or are you comfortable having, a discussion with them about what your wishes would be under a variety of circumstances?
  - Is he or she good at making decisions under stress?
  - Would he or she be able to make a decision that is in your best interest – even if other family members or loved ones were pressuring them to make an alternate decision?

If you need to revise or change your health care proxy or agent, and your advance directive was originally executed by an attorney, you may wish to speak with him/her about changes, although it's not a requirement to have an attorney draft these documents.

A health care proxy and other documents like them can be completed on your own at sites like https://assuringyourwishes.org/. On this site, you'll find information on advance directives as well as printable forms. You can also contact and/or visit your local hospice or department of health.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA)

In addition to a health care proxy and living will, having a HIPAA release form is also important. The Health Insurance Portability and Accountability Act of 1996 established rules and limitations on medical information that can be shared with third parties. To ensure that your loved ones can talk to your doctors, review your medical files – even find out your hospital room number – ask your attorney (or doctor) for a HIPAA release form. It will allow you to give written permission to hospitals, doctors, etc. to share your medical information with individuals of your choosing, likely your spouse and adult children.

Taking Accounts Into Account

At the first meeting with your team of professionals, you will need to go over the decedent's accounts, including what the accounts are, specifically, as well as determine who will be taking ownership of the accounts. Types of accounts include:

1. **INDIVIDUAL ACCOUNTS:** These accounts were held in the name of the decedent only, have no named beneficiary and must become part of the probate estate (see page 17).

2. **TRANSFER ON DEATH – TOD:** These accounts are becoming more common and are set up as an individual account, but allow for a beneficiary to be designated at the time the account is opened (easy to update and change). Upon death, the beneficiary needs to present a certified death certificate and then open a new account in his/her own name. The assets are then quickly transferred to the new account. TOD accounts pass similarly to an IRA account (see below).

3. **JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP (AKA JTWROS):** This is the most common of the two types of joint accounts. In the JTWROS, all the property/assets in the account automatically go to the surviving account owner. JTWROS accounts are not controlled by the terms of your will. No probate is necessary since the death certificate is all that is needed to transfer the asset to the surviving joint tenant. Usually, a new account will need to be opened, depending on whose Social Security number is listed first on the account. Your financial advisor can provide guidance on this. Real property (like a house or piece of land) can also be owned this way.

4. **TENANCY BY THE ENTIRETY:** This is a form of JTWROS, but one that can only be owned between spouses. This form of ownership is typically used on deeds for real property. The property will pass to the surviving spouse upon the death of the first spouse.

5. **JOINT TENANTS IN COMMON (AKA JTTEN):** Upon the establishment of this type of joint account, typically a form that designates the percentage of ownership of the joint owners will have been completed. For this example, let's assume that it is 50/50: 50% of the assets go immediately to the survivor just like Tenancy by the Entirety as noted above, and the other 50% goes into the probate estate, as that share is still owned by the decedent and as such, all of his or her property goes into the estate account and is controlled by the terms of his/her will, trust or law of intestacy.

6. **INDIVIDUAL RETIREMENT ACCOUNT (AKA IRA):** This account is a specially designated account that is only owned by one person, hence the term "individual." These accounts pass by way of beneficiary designation, which is usually determined when the account is opened, but is also easily updated at any time. Typically, one spouse will designate the other as the primary beneficiary. If the couple has children, they will generally designate the children as equal contingent beneficiaries. There are a lot of other variations to these designations, but what is described here is most typical.

   Since IRAs will pass via this designation, they are not part of the probate estate (therefore not controlled by the terms of the will), but just like all of the above-described assets are includable in the estate for the computation of the estate tax. On pages 21-23, we'll go into greater depth on how these accounts are handled — there are many complexities and it's important to manage them properly the first time.

In 2019, Congress passed the SECURE Act. This Act made some pretty significant changes to how IRA accounts are passed down to the next generation. Prior to this act, upon the death of the second parent, assuming children were named as beneficiary, the IRA account would pass to the next generation and this generation was allowed to "stretch" the IRA for the rest of their lives and continue to pass to ensuing generations. Under the SECURE Act, when the IRA is left to the next generation the beneficiaries have 10 years from the year of death to take out 100% of the balance of the IRA. They no longer have to take Required Minimum Distributions (RMD) as they did under the old laws. However, they must take a 100% distribution in the 10th year. They can take out any amount they choose during the first nine years, and that withdrawal will be taxed as ordinary income. Whatever is left in the 10th year must be completely withdrawn.

The IRS recently released clarifications saying they intend to require RMDs during the 10 years if the owner was already taking his/her RMDs.

This law is not retroactive, so anyone who already had an Inherited IRA prior to January 1, 2020, will be allowed to continue to take distributions under the old law. Anyone who is a beneficiary of an account where the owner passed away after January 1, 2020, will be subject to the new rules under the SECURE Act.

There are some exceptions to the 10-year rule, and they apply to those with chronically ill conditions as defined under Code Section 72(m)(7), along with disabled heirs as defined in Code Section 7702B(c)(2).

Finally, if the beneficiary is the decedent's child and he/she is still a minor, then the 10-year clock does not start until the child reaches the age of adulthood. The IRS is still clarifying whether this means age 18 or 21. Note that this does not apply to other minors, such as grandchildren, nieces, nephews, etc.

7. **OTHER TYPES OF RETIREMENT PLANS:** KEOGH, SEP IRA, & SIMPLE IRA — most of these plans are set up by an individual owner or small business and all have a beneficiary designation just as the IRA does.

8. **401(K) PLAN:** This is a company-sponsored retirement plan where the employee has designated a beneficiary, as in an IRA account. In this case, if the employee has designated someone other than his or her spouse as the beneficiary, the spouse must have consented to it in writing. Upon the passing of the employee, this account will be paid out in accordance to the designation and can be rolled over into the survivor's IRA. Some special handling may be needed; the 401(k) custodian can help you through the required paperwork. If you are the beneficiary, you may want to keep it segregated from your other IRA accounts. Include your financial advisor in this discussion as he or she can provide advice on how best to handle this.

9. **PENSION PLANS:** Assuming the decedent worked for an entity that paid a pension, the surviving spouse may be entitled to continued monthly payments. The type of pension and selection that the decedent made at the time of electing to receive benefits will determine how much, if any, the survivor will be paid. There are typically a few different pension plan choices to choose from, although your plan may only allow you one of these options:

   a. **Full Benefit:** This is only paid to the retired employee, ending when the employee passes away. In this option, the payments will be largest, but the risk is that the surviving spouse gets nothing.

   b. **50% to Survivor:** Typically, this means that the surviving spouse will get one-half of what the employee received in his or her payment. While the monthly pension check is smaller, the upside is that there is a guarantee that the surviving spouse will get a payment for the rest of his or her lifetime.

   c. **Blank Percentage:** Some plans offer multiple choices for how much the surviving spouse will receive; this, in turn, will affect how much is received by the retiree.

   d. **Term Certain Payments:** Some plans will offer payments guaranteed to last a certain number of years or months, no matter when the first owner passes away. The survivor will continue to receive payments until the time period ends.

   If the decedent was collecting a pension or multiple pensions, you will need to contact each pension benefit company to find out what they require to end payments or to pay out the survivor benefit.

   Most of these pension benefit companies will require forms be filled out by the surviving spouse or executor. Each pension company will probably require a death certificate, so as stated earlier, get multiple from the outset.

The Importance of the Beneficiary

Having the correct beneficiary designations sounds very easy, but a simple mistake can have disastrous tax consequences. Having properly named beneficiaries can be a very powerful tax planning tool. It is especially important for the beneficiary; having it done correctly allows the tax sheltered and tax deferred nature of the IRA to continue for many more years. When administered properly, it can even benefit multiple generations. Hence, we strongly urge you to make sure your own designations are correct and suggest that you review and update them every few years.

There are also designations on life insurance and most types of retirement accounts already discussed including IRAs, pensions, 401(k)s, etc. There are two types of designations: primary and secondary (also called contingent). The primary beneficiary is the first person — or people — entitled to inherit the account. In the case of a spouse's death, the primary beneficiary is usually the other spouse. The secondary or contingent beneficiaries are those who would inherit if all the primary beneficiaries have also passed away or choose to disclaim some or all of the account. Disclaimers are a useful postmortem planning tool (you'll find more information on disclaimers on page 23).

With no beneficiaries designated, the IRA account will pour into the estate which will trigger income taxes that will need to be paid — in addition to estate taxes that may be owed. The taxes in this case would be combined and not offset, thus potentially causing a tax rate as high as 80%. Required withdrawals may still need to be taken which may trigger income taxes, however they would be gradual and not required to pay all at once.

10. **TRUSTS:** What is a trust? One of the most concise definitions is that it's an asset with an instruction attached to it. The official definition of a trust is 'An entity created to hold assets for the benefit of another person or entity, with a trustee managing the trust.' When a trust is created by a will it is called a 'testamentary trust,' after the 'last will and testament.'

    In many cases, a person's will may have instructions for a trust to be established when the estate is settled. This is one example of when it is critical to have an attorney — ideally the one who drafted the will — to assist you with this process, as he or she is likely aware of the trust's stipulations.

    Of the many trusts the decedent may have set up, the most common one is called a Revocable Living Trust (RLT). In this trust, the decedent ideally will have transferred all of his or her non-retirement property into the trust. The decedent was likely serving as the trustee, managing his/her affairs just as he/she had done prior to the establishing of the trust. If the RLT was properly funded, then no probate is required (remember, probate is only required if the decedent died with assets in his or her own name which do not pass by beneficiary designation or trust). The other advantage is that within the trust, a successor trustee has usually been named, and that person can take over managing the trust.

    The key advantage is that all the affairs of the estate are kept out of the courts and thus, out of the public records. It does not save any estate taxes on its own, which is a common misconception with RLTs, however it can contain smart tax planning language to help reduce or eliminate taxes. An RLT is typically more expensive to create than just a will, but a properly funded trust will save the estate court fees, attorney fees, and time. The successor trustee can begin to settle the estate almost immediately, whereas an executor needs to wait until he/she is appointed by the court. During the Covid-19 pandemic, the courts were closed for several months; RLT based estates were able to be settled quickly, whereas will based estates were essentially frozen for months until the courts re-opened.

    If you read a revocable living trust closely, you'll see that after the language appointing the trustees and the terms for when the grantor is alive, the disbursement section looks and reads just like a will. If a revocable trust has been established and properly funded, ask your attorney — and more importantly your financial advisor — to see what is required to update and change the trustees. In some cases, if it is the first spouse to die, the trust simply continues with some minor adjustments in the surviving spouse's name. If the assets in the trust are going to be distributed to the beneficiaries (or into trusts for beneficiaries), the trustee would follow similar steps that an executor would take, but fortunately would not need to go through probate for the court's approval.

    There are many types of trusts — enough to write an entire book about. This paper has touched upon revocable and testamentary trusts, but please note that there are many more available. If you have questions, ask your professional team.

11. **DIGITAL ASSETS:** While you may have arranged for who will inherit your money, your jewelry, and grandma's silver, have you given any thought to your digital assets? Think domain names, photos stored electronically, digital music files, social media accounts, computers, tablets, smart phones, smart watches, and the like. It is important that your estate planning documents address who can control these assets for you during your lifetime and upon your death. You may even want to specifically bequeath some of these assets to your heirs. You should be sure that your wills and/or trusts include language giving your executors and trustees control over your digital assets and be sure that your power of attorney documents include language as well so your agent can control them while you are still alive. Keep an updated list of User Names and Passwords (in a safe place, of course) so that people you trust can easily access online accounts. Don't forget to include accounts such as travel rewards programs, credit cards, online shopping accounts, online subscriptions, etc.

Probate

The Surrogate's Court is the local court that deals with wills, trusts, guardianships and other matters pertaining to estates. Probate is the process of proving that the will is valid. Each state has its own rules regarding probate, and of course some states are more difficult (and more expensive) than others.

One of the biggest misconceptions about probate is that if a person has a will, probate isn't required. If you have a will and die with assets in your own name (and there is no named beneficiary), probate is required. It is a process to ensure that your wishes are carried out and offers protection for your beneficiaries. In some cases, a will may be admitted to probate quickly while in others it could take months or even years. Speak with your attorney to get a better idea of what probate might look like for your estate.

Once the will is admitted to probate, most likely with the help of the attorney, the executor is officially appointed by the court and can begin to settle the estate. Note that until the executor is appointed, any assets passing through probate are frozen. The court will issue 'Letters Testamentary,' which are the court certificates you will need to prove your authority as the executor.

> An executor is appointed by the court after the will is admitted to probate, most likely by an attorney.

When there is no will, an administrator is appointed by the court through a process called 'Administration'. The court issues 'Letters of Administration' – these are the court certificates proving your authority to act as the administrator of the estate. The administrator has the same functions as an executor. Since there is no will, the administrator distributes the estate according to state law. Generally, the estate will pass to the decedent's closest living relatives. Percentages vary from state to state. While most wills state that the executor does not need to post a bond, depending on the size of the estate, a bond will usually need to be posted by your Administrator. This can be expensive and time consuming – and reiterates the importance of having a will or trust.

Estate Account

An estate account is the account established to hold probate assets after a person is deceased. In order to open an estate account, you will need the following:

1. **DEATH CERTIFICATE:** The official death certificate must feature a raised seal or other marking proving it is not a copy.
2. **TAX IDENTIFICATION NUMBER (TAX ID):** Typically, your attorney or accountant will apply for and receive the Tax ID number from the IRS for the estate. Since an estate, by definition, becomes its own legal entity, it needs its own Tax ID number. Think of a Tax ID number as a Social Security number for a nonliving entity, such as an estate or trust. The CPA or Attorney can usually get this for you from the IRS within a few days of the executor/administrator appointment.
3. **LETTERS TESTAMENTARY, LETTERS OF ADMINISTRATION OR CERTIFICATES OF APPOINTMENT:** These are the official forms issued by the probate court verifying that the will has been approved and an executor (or administrator when there is no will) has been appointed. Sometimes the probate court will issue a temporary certificate to allow the executor to begin taking action while more information about the estate is being secured. Most financial firms will only accept these forms dated

within 60 days, so it's not recommended for use beyond 45 days: by the time it gets processed it will be more than 60 days old and they will reject it and make you start over. New certificates can be obtained at any time from the court for a small fee.

4. **AFFIDAVIT OF DOMICILE:** This form is usually prepared by the attorney and signed by the executor in the presence of a notary. It is used as proof to show where the decedent lived at the time of his or her death.

5. **STOCK OR BOND POWERS:** These will be needed to accept individual security certificates in order to deposit the securities into the newly opened estate account. Many times, these forms need to be signature guaranteed. This is usually done at a bank or brokerage firm and differs slightly from a notary.

Once the estate account is opened, you can pay the bills and debts and reimburse yourself and others for what was spent prior to the opening of the estate checking account. (Remember: make sure you keep track of these expenses).

Once the estate account is open, remember:

- Not everything goes into the estate account, but in general, all of the decedent's bank and brokerage accounts are best managed from the estate account.
- It is okay to have more than one account, but usually it is easier to consolidate some of the decedent's accounts.
- **NEVER** move an IRA or other retirement account into an estate account unless the CPA, attorney and financial advisor have all agreed to this. There can be serious tax implications in doing this (more on IRA accounts on page 13).
- **NEVER** comingle your own assets with assets of the estate. Do not add your own funds to an estate account and don't deposit estate funds into your own account. Do not pay your personal bills from the estate account. Doing any of these are grounds for the court to remove you as the estate representative.

PAYING BILLS

You will need a checkbook since there will be a lot of bills that will need to be paid. Note that:

- All bills for the estate, or accrued by the decedent prior to death, should be paid through the estate account.
- Any bills that you or anyone else paid on behalf of the estate prior to the creation of the estate account (for example, the funeral bills) should be reimbursed by the estate.
- Be sure to save all receipts and keep accurate records of expenses incurred by the estate. You will need this information for the estate tax return, as well as an accounting for the beneficiaries.
- Remember: there may be more bills and debts than there are assets, so be careful to make sure you amass all the bills before you start paying them. It may take creditors some time to come forward. Before you start paying bills, ask your attorney which bills need to be paid right away and which ones can wait.
- Creditors are prioritized, so in the event that there is not enough money in the estate, certain creditors get paid before others. In New York State, for example, funeral expenses, debts to the government, taxes, and the like, get paid before lower creditors, like credit card companies. Each state has its own rules of priority, so be sure to check with your attorney. If you are the executor/administrator/trustee, be aware that you may be liable if there is not enough money and you have paid the lower creditors (or beneficiaries) first; this could leave you without enough money to pay those creditors who rank higher.

Social Security

If the deceased was collecting Social Security payments, the local Social Security office should be contacted as soon as possible. Usually, the funeral home will do this for you, but you should check to make sure.

Social Security will take back any benefits paid after death. For example, if you get a Social Security check for the decedent in the mail and you cash it, you will have to return it or pay it back. If the decedent was having payments made automatically to his or her bank account, Social Security may automatically debit the account. Notify Social Security as soon as possible to avoid these kinds of issues.

Contact the nearest Social Security office, make an appointment, and go see them. They can stop the payments to the deceased. If you are entitled to some portion of the benefits, they may start or adjust yours at the same time. Be sure to bring a death certificate with you, as well as a marriage certificate if you are the surviving spouse, and the birth certificates for any minor children. Go to www.socialsecurity.gov to find the office closest to you.

State Office of Unclaimed Funds

Each state maintains an Office of Unclaimed Funds: Search on the Internet for 'unclaimed funds by state' to find your state's locale.

The Office of Unclaimed Funds holds 'forgotten assets'. Examples include a person who forgot to cash a refund check or overlooked an old bank account or stock certificate; or maybe he or she moved and didn't leave a forwarding address. A May 2012 article from The Journal News website reported that New York state alone is sitting on 'an unclaimed pot of $11 billion,' and went on to say that there are over 26 million accounts unclaimed in New York, dating back to the 1940s.

To view your potential lost property, search the internet for your state and "unclaimed funds". Be sure to use the official state website and not a third-party website.

Even if the decedent was a good bookkeeper, you still may find some assets that were somehow overlooked. One client of our firm retrieved almost $250,000 and although she was a grieving widow, she couldn't help but admit that she felt like she had hit the lotto; in this case, the cause was due to the fact that the client moved and there had been some stock splits and spin-offs of which he was unaware.

Whatever the case, entities are not allowed, by law, to keep these "forgotten assets". The law states that after a specified period of time, these forgotten assets have to be turned over to the state, who then tries to find the owner. The reality is, however, that the state's Office of Unclaimed Funds spends more time fielding calls from claimants then they do actively seeking them out.

Check each and every state where the decedent lived or may have had an account or safe deposit boxes. Don't forget to check maiden names and nicknames as well. Most states have unclaimed asset information online so it will only take a few minutes to find out and if needed, make a claim. (FYI, the legal term for the reversion of property to the state is 'escheat').

There are no fees to reclaim funds, so be careful about companies who claim they will get it done faster for a fee. New York, for example, sets a limit on finder's fees of 15%; many companies try to charge much more. Whether you file the claim yourself or hire a company to do it will not make any difference how quickly the claim is processed.

Heirs

Unlike in the movies and television, rarely is there an official reading of the will where the family gathers around the attorney who stoically reads the decedent's wishes aloud. In the real world, settling an estate takes time – typically at least one year: it is important to make sure that all of the beneficiaries are aware of this time frame from the start.

Furthermore, if you know of or suspect animosity exists amongst the heirs, make sure you let your advisors know. You may need to take extra steps to protect yourself and the estate. Even something as seemingly innocuous as letting one child have grandma's pie plate without consulting the other heirs can cause major trouble. When emotions run high, people don't think rationally and are quick to put "principle" above all else, at any cost.

HANDLING DISCUSSIONS WITH HEIRS

Communication from the outset is key: most beneficiaries have never been an executor – or even a beneficiary – so they are not familiar with the extensive time and work involved with settling an estate. Beneficiaries often start to wonder "what's going on" when they haven't received their inheritance after a few weeks or months.

Make it clear from the start that they should not expect to receive their inheritance for at least one year. Give the beneficiaries updates from time to time so they know what is going on with the estate – this will go a long way in preventing the calls asking "What the heck is going on?", and more bluntly, "Where is my money?"

Listen to the advice of your professional team when talking to the heirs. It may be your first time talking about this...but it's not theirs.

RELEASE LETTERS FROM HEIRS

A release letter simply states that the beneficiary agrees to the assets he or she will recieve, and will not sue the estate. Prior to any distributions made from the estate to heirs, all beneficiaries should be required to sign a release letter.

It may also include language stating that they are responsible to reimburse the estate – even after they receive their distribution – should an unexpected expense arise and there is not enough left in the estate account to pay the bill.

A Release Letter Protects You

You never really know someone until you have to share an inheritance with them. A comprehensive release letter will alleviate some of the stress and challenges that may arise among beneficiaries.

If a beneficiary won't sign the release letter, don't send him or her a check or transfer assets. In many instances, family members get along just fine during the client's lifetime, but postmortem, arguments develop over how the decedent's assets are divided. A release letter is a must: as the executor/administrator/trustee, if a beneficiary sues the estate, you will be the one responsible — so it's vital to protect yourself and your own assets.

ADVANCE INHERITANCE & HEIRS

Some future heirs may feel they should not have to wait to get some or all of their inheritance. For example, the father passes away and his wife is left with what the children feel is "too much" money — basically, they don't want to wait until she passes away to get their inheritance. This becomes especially problematic in second marriages and multiple children. As always, let the professional be the heavy and discuss these matters with the heirs directly — the estate plan may have included special trusts to reduce or delay taxes, as well as language to ensure funds will flow to the children eventually.

Life Insurance

Regarding life insurance policies, this 'to do' list is a good starting point:

- Start by calling the insurance company and asking for a simple beneficiary claim form to complete and file.
- Once the claim form is completed, it needs to be submitted along with an original death certificate to the insurance company.
- In most cases, the insurance company will make the payment within 30 days.
- If it is a very large policy benefit, or the death was under unusual circumstances, it may take longer. If either of these are the case, your estate team can help by speaking directly with the insurance company.
- If the decedent died outside of the United States, expect the claim process to take longer. If the original death certificate is not in English, it will need to be translated and apostilles in the county of death may be needed.
- Before you file the claim form, check with your team first: it might make sense to disclaim the insurance for tax purposes. To disclaim something is to essentially say "no thanks" so the funds pass into a trust or to the contingent beneficiaries.
- Having the original policy is helpful, as it will list the terms of the insurance and the beneficiaries. Don't worry if you can't find it: insurance companies have forms for lost policies. It may delay the payments by a little, but not by much.

SECOND TO DIE POLICY

If you have a 'second to die' policy, you are not required to notify and submit a death certificate to the insurance company when the first spouse dies, but it is a good idea. When the second spouse dies, the heirs will only have to worry about having one death certificate.

The passing of the first insured generally does not change the premium or any other terms of the 'second to die' insurance policy; it will remain in force as long as you continue to make the required premium payments.

Veteran Benefits

If the decedent served in the military, the heirs may be entitled to collect benefits the veteran may have accrued during his or her service. This may include health insurance, life insurance, or other types of payments.

To see if the heirs are entitled to any benefits, get in touch with the Department of Defense or contact your local Veteran Affairs office. www.va.gov

Re-Titling Assets

Any assets in the name of the decedent at the time of death will likely need to have a new title or new name assigned including:

REAL PROPERTY, A HOUSE, LAND, CARS, ETC.

BANK ACCOUNTS, STOCKS, BONDS, MUTUAL FUNDS

OTHER FINANCIAL ASSETS

Facilitation of this process is one of the key aspects assigned to the executor when handling the estate.

Upon distribution of the decedent's stock portfolio, the stocks need to be re-titled under the names of the beneficiaries.

Note that if probate (see page 16) was required, the executor can't formally close the estate until all assets have been re-titled.

Estate Taxes

As the saying goes: "there is nothing certain in life except death and taxes."

Unless Congress fully repeals the estate tax completely, it is a tax that needs to be paid. And remember, even if the federal estate tax disappears, some states have their own form(s) of estate taxes as well.

People are often confused about probate and estate taxes. Just because an estate avoids probate, it does not mean that estate taxes do not have to be paid. Taxes and probate are two separate issues.

Tax Implication Alert!

Just because an estate avoids probate because the assets were in a trust or joint accounts, it does not mean that estate taxes do not have to be paid.

SAME-SEX MARRIAGE

After historic regulatory changes, we want to take the opportunity to make mention of this timely topic. In June 2013, the Supreme Court in Windsor vs. U.S. overturned the Defense of Marriage Act, declaring it unconstitutional not to recognize same sex marriage. The Windsor case originated from an Estate Tax bill that Edith Windsor, the plaintiff, thought was unfair that she be forced to pay. If she were in a heterosexual

marriage, she would have owed nothing. So now the same estate tax laws that apply to heterosexual couples will apply to same sex couples.

For same sex couples who have not updated their estate plans post-2013, now is a good time to review them with your attorney.

FEDERAL & STATE ESTATE TAXES

Currently, in 2022, the federal estate tax starts at estates valued over $12,060,000. Each year the limit increases slightly. However, in 2026, the limit will drop by about half. Of course, Congress and the President could make changes sooner (including lowering the limit sooner than 2026). Each state that levies some form of estate tax has its own limits and rules. In New York, for example, the threshold in 2022 is $6.11 million, but if your estate is just 5% over the limit then the entire estate, not just the excess, is taxed. Careful planning is key!

This is another key area when your team of professionals will help you navigate the murky waters of the most recent estate tax laws.

DATE OF DEATH VALUATIONS

Date of death valuations are required in order to file estate tax returns, so you will need to have all of the decedent's assets appraised or valued for the date of death. For securities like stock and bonds, this is fairly easy. For privately held business, real estate, collectibles and other assets, the appraisal step can be a little more complicated. So, let's begin with the easy part.

Cash bank accounts, like money market accounts, checking and savings accounts, are treated at their face value on the date of death. For CDs and bonds, accrued interest must also be computed as this is what is technically owned by the decedent on his/her date of death.

Stocks, bonds, mutual funds, and the like can be easily valued by the financial advisor. He or she will simply generate a list of assets owned by the decedent on the date of death and determine the market value. Usually this is done by getting the high price, low price and closing price of a security, taking the average of the three, and multiplying by the number of shares owned. For securities like mutual funds and bonds that may only price once a day, the closing price is used.

Valuations for death on weekends or holidays will get the same prices for the day before and after. For example, if the death occurs on a Saturday, the prices are averaged out over Friday and Monday to calculate the security valuation.

Appraisals of real estate, business interests, or other valuables should be done by an accredited appraiser… not just anyone. It is best to get an appraiser referral from your CPA or attorney as they have probably worked with many qualified appraisers in the past.

You may also want to take advantage of something called a "6-month alternative valuation." In this case, the assets in the estate are revalued exactly 6 months later from the decedent's death, using the same methods as listed above. If the values are lower after 6 months, they can be used to decrease the estate taxes that may be owed. Note, however, that by using the lower valuation, you are decreasing the new cost basis that is passed along to the heirs and possibly raising future capital gains taxes that would be paid upon the sale of the property.

If the IRS or state taxing authority should challenge the estate on the appraised property, you need to be prepared. Public securities are easy for the IRS to double check, as are bank accounts, and they are not open to the subjective opinions of an appraiser. So be careful and hire the right person or company to carry this portion of the estate out — don't select an appraiser based on who is going to give you the lowest value on an asset: it's important to protect yourself should the IRS conduct an audit. Keep in mind that getting the lowest value isn't always a good thing as it may trigger more capital gains tax once the asset is sold by your estate or the beneficiaries.

Note that even if you do not need to file an estate tax return, you will still want to keep a record of the date of death values. When an asset is sold, either by the estate or by a beneficiary, the date of death value of the asset is needed in order to determine if capital gains tax will be due.

ESTATE TAX PORTABILITY

Estate Tax Portability is something that many estate planners have advocated for years but was only passed into law in late 2010. Historically, if a decedent didn't take advantage of the amount you can pass on tax free, the surviving spouse couldn't take advantage of it later. It was a "use it or lose it" tax exemption. Now, however, spouses can combine their federal estate tax exemption, allowing the surviving spouse to take advantage of any exemption amount the first spouse to die did not use. Portability allows the unused portion to be passed to the surviving spouse (and only the surviving spouse).

Based on the current IRS ruling (as of 2022), the surviving spouse now has five years to file and claim unused estate tax portability from the deceased spouse to use at his or her death. This can have a significant impact on the surviving family and provides a considerable amount of time to plan for how to use portability.

Keep in mind too, that while the federal government currently allows portability, not all states offer this option. State taxes may increase if you focus only on the federal amount and ignore your state's rules.

DISCLAIMERS

In this paper there have been a few mentions of the terms "disclaim" or "disclaimers." These terms refer to a postmortem estate planning technique where a beneficiary of the estate voluntarily chooses to say "thanks, but no thanks" to some or all of their inheritance. You may also hear this referred to as a "renunciation."

If this option is exercised, the contingent — or next named — beneficiary then inherits the disclaimed property. In some cases, the disclaimed assets may pass to a trust.

Disclaiming inheritance might save the beneficiaries on income taxes or provide other money-saving allowances. While it can be a great planning tool, all parties need to take time to understand the pros and cons of your particular case. There are certain deadlines that must be met, without exception, and certain forms will need to be filed: be sure to include your advisors throughout the process.

Final Thoughts

The goal in writing this paper is to help others prepare and know what to do during one of the most difficult times in their life. There are clear steps to take to handle an estate properly, but if you have not done it before, it is easy to make errors that can cost you time, money and aggravation later. So, take your time, seek help of competent professionals, and know that you don't have to go through this alone.

> "During the weeks following the death of my husband, I followed the instructions of my advisors and persisted with all necessary paperwork. I recall not wanting to be alone, visiting with family and friends and making every effort to be busy. I experienced feelings of sadness constantly but attempted to put on a bright countenance despite the pain in my heart. Birthdays, anniversaries and holidays were particularly difficult. I attended to all the necessities regarding the home and landscape in a perfunctory manner, but all the while my heart was weeping for my husband. My sadness would sometimes drive me to tears in the realization that I would never in this world hear his sweet words again, nor would he share in the joy of his beloved grandchildren."
>
> — GERALDINE S.

To help you get organized we recommend using this checklist to gather the following information:

- Social Security number
- Marriage certificate
- Safe deposit box number, its location and the location of the key
- Tax records
- Homeownership papers, mortgage, and title
- Most recent will and estate-planning paperwork
- Insurance and policy numbers, as well as their issuer
- Name and location of accountant, attorney, and wealth advisor
- Bank account numbers and location
- Financial investments, such as mutual funds, certificates of deposit, or bonds
- Contact name and account numbers for pensions, 401(k)s, IRAs
- Documentation for stock options and/or corporate stock
- Auto and other vehicle titles
- Details of outstanding debts
- Funeral and burial wishes
- Account information for utilities and/or any bills on automatic payment plans
- Online account usernames and passwords

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