

# WHAT TO DO WHEN SOMEONE DIES

## Estate Administration

This is a primer in understanding estate administration, which is needed whether there is or is not a will and/or a trust. This is intended to give you some basic knowledge, **but is not all inclusive**. I strongly recommend you hire a good attorney in your area, who specializes in estate administration and follow their instructions. The entries below reflect California law. Other states may have different provisions. Check with your state for any changes in the law.

Professional Estate Organizers can be of great assistance to the designated Administrators with their duties listed in this document.

Names of those "Successor" folks:

Estate Administrator or Personal Representative titles are used in some states.

Special Administrator, as appointed by the Probate Court.

Executor/Executrix when there is only a will, which will need to be probated.

Trustee when there is a trust, with or without a will. You are no longer a "Successor Trustee", as you are now the "Trustee". Do not sign papers as the "Successor Trustee". If there is a trust, probate proceedings are typically not required, unless total assets valuing over \$150,000 are not titled in the name of the trust. That figure applies to California, and other states may have different laws. In California, if the assets are less than \$150,000 in total, an Affidavit of Small Estate can be signed, AFTER 40 days of the date of death. The person signing this legal form has all the authority and responsibility to settle the estate according to state and federal law. Check on your state laws.

Contact the deceased's estate planning attorney for guidance, or an attorney of your choice who specializes in estate planning and estate administration.

Change the locks on the property.

Do not pay estate bills or distribute, give away or sell or lease estate property, without guidance and never co-mingle estate funds with your personal funds!

Obtain originals of legal documents: The Trust and any amendments or the Will and all codicils. You may need access to the safety deposit box. If you are not on the signature card, you will need a certified death certificate for this access and copies of the will or trust. If you are not on the signature card, at this time, only originals of legal documents can be removed and copies must be placed in the box. Have the attorney guide you through this process, as each state may have different requirements.

If a Will exists, have the attorney file this with the court. In California, this is in the jurisdiction of the Probate Department of the Superior Court. There is no separate "Probate Court."

Encourage the Trustee/Executor to hire a Professional Estate Organizer to assist them with the arrangements, paperwork and the tangible physical assets, such as the contents of the home.

If you are involved in making the funeral arrangements you can order the **certified death certificates** through the mortuary. *(I recommend at least 12. You will need these for social security, each bank, brokerage firm, insurance company, etc. Often these will be returned if requested.)*

Follow the instructions of the attorney in gathering the information needed for probate, settlement of a trust and/or the estate tax preparation. These instructions generally include the following issues:

- Find and identify all legal documents

- Find and identify all assets and liabilities and valuing them as of date of death.

You will have a fiduciary responsibility for these assets and will have to keep accurate records of all funds until the estate distribution is completed and you are released of your duties. Keep an excellent "paper trail", especially if you need to liquidate and combine assets for distribution.

Contact the person's accountant, former employer regarding pensions, life insurance, brokerage firms and investment companies.

Contact Social Security/Medicare to notify them of the death. If there is a spouse, have his/her information available at the time of the call also. *(There is a small death benefit paid only to the spouse or to an adult child with disability. Ask Social Security for the latest benefits available.)*

When Certified Letters are issued in case of probate or with trust documents and certified copy of death certificate: Open a bank account in the name of the estate. Example: Janice Jones, Executrix for the Estate of James P. Jones, Jr. You will need a Federal Tax Identification Number (EIN) to open this account, as the estate is it's own entity now. You can obtain this online or your attorney can assist you in getting this. It is advisable to have one Trust checking account to cover expected expenses, and to have all other assets in interest earning Trust accounts until assets are distributed.

TIP: Close all but one of the old accounts in the name of the decedent. Find one that does not charge a minimum fee and leave it open for at least a year, so anything that comes only in the name of the person, can be deposited there and transferred to the trust or estate account.

Note: Banks will not deposit a check made out to "The Estate of Mary Jones" into a trust account and vice versa. You may have to send checks back to be re-issued in the appropriate manner. Banks will not set up an estate account unless there is a probate, and will need the trust documents to set up a trust account. If it is a settlement of a small estate, they will not set up an estate account, as there is no probate involved.

Check with attorney to see if he/she has submitted notices of Fiduciary Relationship to IRS and State Tax Board on your behalf.

Review assets and liabilities and cash flow to provide for payment of all bills, funeral expenses, estate tax if applicable, and income tax liabilities. Pay property taxes when due!

Have decedent's address changed so that you receive all communications, bills, etc. Collect checks to be deposited when an estate/trust account has been established.

Contact the person's accountant, former employer regarding pensions, life insurance, brokerage firms and investment companies.

If the person is single or the second to die consider cancelling all credit cards, AFTER making certain that no automatic charges/debits are assigned to the card. Also check with your state for escheated accounts; get credit report from Experian, TransUnion, Equifax, to be positive that you know of all accounts that are open. Check with attorney as to timing of this action.

Note: It is currently taking the State of California about a year after it has received an asset to process it and make it available to the beneficiaries.

If decedent is receiving disability insurance payments, notify insurance company. Ask about survivor benefits of the policy for spouse or children.

Review other insurance (auto, personal umbrella, homeowners, etc. for possible refunds. Note: The homeowners or auto insurance *must remain in effect* until the property is sold or transferred out of the estate. *Insurance companies may refuse to insure an empty home or charge an increased fee.*

Gather assets in safe deposit box – when you have Letters or authority for access from the Probate Court or with a copy of the trust. You will also need a copy of the death certificate.

Notify tenants and inspect property if the property is occupied. (In case of a rental facility, a real estate management firm might be a good resource for assistance for continued management. Inform your attorney that you are hiring this assistance).

Create an Inventory and Appraisal list. Obtain appraisals of all assets. Check with your attorney on how to get real property appraised, as this may involve a Probate Referee, (an appraiser approved by the Probate Court).

Work with accountant to prepare individual tax returns for the year the decedent died.

Work with attorney or a CPA/accountant with specialty in Federal and Estate Tax returns. These must be filed within 9 months of date of death. Extensions are possible, but like the regular individual income tax law, the payment of *estimated estate tax is due at the time the extension application is filed.* Note: The Executor is personally liable for any estate tax due, if any assets, which would be needed to pay these taxes, are distributed before the taxes are paid! Work closely with your advisors as there are different types of exemptions, generation skipping transfers, discounts, disclaimers, etc. that could be used to effect the taxes due.

Federal Estate Taxes are due if the fair market value of the estate exceeds \$5,340,000. This figure will change according to the whims of Congress. If Federal Estate taxes are due then most likely state taxes are also due. In California, this issue is included in the Federal Tax return.

Plan to keep a sufficient financial reserve as you may be receiving a bill for "Unsecured Property Tax" from the County Assessor's office AFTER the property has been sold. This will NOT be handled by the title company at the close of escrow. This additional tax reflects the tax on the higher fair market value of the property at the time of death of the owner - until the sale of the property.

Continue to manage all investment and real estate assets, keeping excellent records of income/gains & losses/ expenses, etc. These will be needed for the final accounting.

Work with attorney or accountant to prepare final accounting. Do not distribute assets in a probate situation, without an approved Decree of Distribution from the courts.

Distribute the assets according to the trust documents. If there was probate involved, distribute according to the will and court ordered Decree of Distribution. Work with attorney if there are real estate property ownership transfers required, etc. Again, coordinate with the attorney or accountant to prepare income tax returns for the period of your administration of the estate, and notify beneficiaries of any income tax liability they might with regard to their inheritance.

NOTE: I usually recommend that your CPA do the final accounting, especially if you are also a beneficiary of the estate.

Probate fees or compensation. These fees are exactly the same for the attorney and for the personal representative. In the State of California, the percentages are:

4% of the first \$100,000 value of the estate

3% of the next \$100,000

2% of the next \$800,000

1% of the next \$9,000,000

½ % of the next \$15,000,000

For all assets above \$25,000,000, the courts will determine what they consider to be a reasonable amount. The attorney may request additional payment for doing "extraordinary" services, such as completing the estate tax return, etc. CPAs and Enrolled Agents can also prepare these returns. Clear communication about fees is mandatory at the beginning of your vendor relationships.

Keep exemplary records! Every penny in (who it was from, date of arrival and where you put it) and every penny out (who it was to, what it was for, date you paid it). You have assumed a fiduciary responsibility for this estate, and as such, are personally liable. All beneficiaries can request detailed records.