

Procedures After Death, for an Executor

We provide the following information merely as a guideline of the procedures that will need to be followed at the time of your death. Each situation is unique, and changes in the law may occur, so we cannot guarantee that the following information will be totally accurate or comprehensive for every situation. It is important to obtain competent legal assistance to administer your estate upon your death. This office may be contacted regarding current law, or for help in completing procedures.

WHAT TO DO, UPON YOUR DEATH

The executor(s) should do the following upon your death:

Filing of Will:

Any will must be filed with the Clerk of Court in the county where the deceased lived at the time of death. Filing the will does not create a probate estate. Filing is required by law. The will should be filed in the circuit court of the county in which the decedent was a resident at death. If the decedent moved from home to an assisted living facility in a different county, you should file the will in the county of permanent residence, not the county where the facility is located.

Apply for Federal Tax Identification Number:

In order to open bank accounts, file fiduciary income tax returns, or to complete other management duties as executor, a federal taxpayer identification number may be required. Application for this number is made by completing IRS Form SS-4, Application for Employer Identification Number. This form may be obtained online at www.irs.gov, from the Internal Revenue Service, your accountant, or this law office. We would be happy to obtain this for you if you decide to have us help administer the estate.

Real Property:

Record the following items in the public records in the county where the real estate is located. The original documents will be returned to you after they are recorded.

1. Record any deeds transferring property which were not previously recorded.
2. If values on property tax bills are substantially accurate, make certain that the most recent property tax bill is kept as evidence of fair market value of the property on the date of death, or obtain a written appraisal of each parcel of real estate. If the fair market value designated on the tax bill is substantially low, an appraisal may be advantageous since the fair market value as established on date of death will become the income tax basis of the property in most circumstances. Therefore, if no death taxes are due, a high fair market value is usually beneficial.

Personal Property:

Present a certified copy of the death certificate and your Letters of Qualification naming you as executor to each bank, stockbroker, etc. You may close the account and consolidate all liquid assets into one account.

Payment of Bills and Day-To-Day Financial Management:

All estate expenses and deceased's bills should be paid from the checking account you open in the name of the estate, and all income or receipts from estate assets should be deposited in that account. For accounting purposes, it is easiest if all receipts are deposited into one account, and that account is also used to pay all bills. This way, the register from that account can be used for estate activity from date of death through date of distribution of assets to beneficiaries. It is very important that all receipts and all expenses are accounted for, for tax reporting and to be able to substantiate executor activity.

Inventory:

If you have opened probate, an inventory of estate assets will be due in four months. This inventory consists of a complete list of all assets in which the decedent had a sole ownership interest as of the date of death, including the fair market value of the property as of the date of death. Establishing these values will provide evidence for the new tax basis of any assets that receive a step-up in basis. If assets are later sold, capital gains tax will only be due on any increase in value since the date of decedent's death.

The forms needed to complete the Inventory are available at the website for the Commissioner of Accounts for the county in which the decedent lived permanently.

This office may be contacted if the executor would like help in creating the inventory. This also insures that tax ramifications will be considered.

Accounting:

If you have opened probate, an accounting for the estate assets will be due in sixteen months. You may file the accounting earlier, but should wait until the Commissioner of Accounts notifies you that the inventory has been accepted. The necessary forms are available at the website of the Commissioner of Accounts for the county in which the decedent lived permanently. You will need to present receipts for all income and expenditures; you should request check images with the checking account statements. The purpose of the accounting is to demonstrate the disposition of all estate assets, starting with the value of assets on date of death, plus any receipts since date of death, minus expenses paid, and distributions made to beneficiaries. The balance must equal the amount on hand at date of distribution. Balancing this account is similar to balancing a checkbook, but on a larger scale. If the first accounting does not show a zero balance, because all assets have not been received or paid out, a second accounting will be due one year after the first accounting.

This office may be contacted if the executor would like help in creating the accounting(s).

If the Decedent's Taxable Estate Exceeds Unified Credit Amount:

Federal Estate Tax:

If the decedent's assets exceed the amount sheltered by the federal estate tax unified credit for the year in which the decedent died, a federal estate tax return (Form 706) must be filed within nine months from the date of death. Failure to file the return on time may result in substantial penalties and interest. Immediate consultation with this office may save substantial amounts of tax when the decedent's taxable estate exceeds the amount sheltered by the federal estate tax unified credit. The basic estate tax exclusion amount was set in the 2017 Tax Cut and Jobs Act at \$10 million, indexed for inflation as measured by Chained CPI. This law is due to "sunset" in 2025, and the estate tax would return to \$5 million, indexed for inflation. In 2019, the exclusion is approximately \$11.24 million per person.

Although the decedent's taxable estate may not exceed the exclusion amount, it is necessary to file a Form 706 to elect "portability" to preserve the right of the surviving spouse to use any estate tax exemption not used at the death of the first spouse.

State Inheritance and Estate Tax:

File any state inheritance or estate tax returns that may be required. In many states, neither estate nor inheritance tax is assessed on estates of under the unified credit amount. However, even if the state in which the decedent resided does not assess an estate or inheritance tax, if decedent owned property in a state with an estate or inheritance tax, it may be necessary to file tax returns. In many states, the tax rates and the amount of exemptions and credits depend upon the relationship between the decedent and the person receiving the property. As of this time, Virginia has neither an estate tax nor an inheritance tax. Maryland has been increasing its estate tax exemption: it will remain at \$4 million in 2019.

Final Income Tax:

File the final state and federal personal income tax returns of the decedent to report the income earned from January 1st to the date of death.

Fiduciary Income Tax:

File any state and federal fiduciary tax returns which may be required to report the income earned by the estate from the date of death to the date assets are distributed.

Receipts and Releases:

At the time that estate assets are distributed to beneficiaries named in the Will, it is wise for the executor to obtain a signed receipt and release from each beneficiary. The receipt and release is the beneficiary's statement acknowledging that the beneficiary has received the assets, and has released the executor from liability. The receipts and releases should be kept by the executor, in case a beneficiary makes a later claim.

Distribution of Assets to Beneficiaries:

REAL PROPERTY:

Have deeds and transfer tax returns prepared which transfer each parcel of real estate to the beneficiary designated in the Will or to a buyer if the real estate is sold to a third party.

OTHER PROPERTY:

After all debts, expenses, and taxes have been paid and releases obtained, remaining assets should be distributed to the beneficiaries as designated in the Will.

Again, if you would like assistance with the above work, please contact this office.