

UNDERSTANDING THE PROBATE/ESTATE ADMINISTRATION PROCESS

After a loved one dies, depending on the complexity of their estate and the advance planning that was done, there may be many things or only a few to be done to settle their affairs. The first steps in settling the affairs of a deceased person are paying the immediate costs and gathering information: Is there a will and/or a trust, and any amendments or other written instructions? What are the assets, how are they titled (eg. are they in joint tenancy, are beneficiaries stated), and what is the approximate value of each asset? What debts did the decedent leave behind? Bank accounts in the name of a deceased person (unless they are in the name of a trust) are frozen for 40 days after the death, so someone may have to front the costs for the funeral and burial if there are no funds that can be accessed quickly. However, the bank will allow access to the safe deposit box to obtain copies of estate planning documents.

When you have gathered as much preliminary information as you can, you will probably want to see an attorney for advice and maybe other help. There are also self-help books for probate and estate and trust administration, such as those published by Nolo Press.

There are required notifications after a person dies. If the decedent was receiving Social Security or other benefits, the agency should be informed to stop sending checks. If the person was receiving MediCal or Veterans benefits, the Department of Health Services and/or the Veterans Administration need to be informed (not required for Medicare). If there is a trust, a copy of the trust and a notice need to be sent to the beneficiaries of the trust and the heirs of the deceased person. If the appropriate language is included in the notice, it shortens the time to contest the trust. If there is a will, the original needs to be lodged with the Superior Court.

One of the early determinations will be whether probate is necessary. To answer that question, disregard all assets that are in trust or joint tenancy, or that have an effective (living) beneficiary. Also disregard vehicles, and disregard community property going to a surviving spouse. If the remaining assets total less than \$100,000 (gross value before deducting liabilities), or after January 1, 2012 less than \$150,000, then probate will not be required.

To transfer assets when probate is not required, such as vehicles or bank accounts, you will need to give the DMV or the bank a death certificate, and an affidavit stating, in essence, that there is no probate because the estate is smaller than the legal limit, and that the person(s) signing the affidavit is/are the person(s) entitled to the property, either because they are the beneficiaries of a will, or because they are the next of kin. The DMV forms can be obtained on their website, and the small estates affidavit (or probate code affidavit) for a bank account can sometimes be obtained from the bank, or an attorney can prepare it.

If there is real property worth less than \$150,000 (after 1/1/12), there is a simplified petition process to confirm ownership in the heir or beneficiary. If there is real property in trust, joint tenancy or community property, there are affidavits that need to be recorded

to confirm the transfer of ownership, along with the Preliminary Change of Ownership Report for the assessor. If the transfer is between parent and child, there is an additional Parent/Child Exclusion form that also must be sent to the assessor to avoid property tax reassessment. If there is property with a value over \$150,000 that is not in trust, joint tenancy or community property, probate will be required. (However, in some cases, if there was intent shown in a trust to put the property into the trust, but it was never actually transferred into trust, a petition procedure may be used to add it to the trust).

If probate is required, it is advisable to have an attorney help you. A Petition for Probate will be filed and served on all interested parties to start the process. The Petition also needs to be published in a legal newspaper. The judge will then sign Letters of Administration. This document gives the executor (if there is a will), or administrator (if there is no will) the authority to open an estate bank account, sell assets, pay estate expenses, and take any other needed actions. The assets will need to be inventoried, with the help of a referee that is appointed by the court, a bond may need to be obtained, and formal notices will need to be sent to creditors, beneficiaries and heirs.

Some of the steps for probating an estate or administering a trust are similar, but must be done in a more formal way for a probate. A tax ID number will need to be obtained, property may need to be sold (with court approval if it is a probate), bills may need to be paid, accurate records will need to be kept of all transactions, and the beneficiaries and heirs will need to be kept informed. The last income tax return for the decedent, an estate or trust income tax return, and if the estate is large enough, an Estate Tax return, may need to be filed. In a probate, a formal notice to creditors is required, and there is a claims form that the creditors must file if they want to be paid. When administering a trust, the creditor's notice is not required, but can sometimes be useful to shorten the time for creditors to make claims.

At the end of the probate or trust administration process, the estate will be ready for distribution. In a probate, the court has to approve the proposed distribution, and the Petition for Distribution must be written in a prescribed format. A formal detailed accounting is needed unless it is waived by all the beneficiaries. After the distribution, the executor can request to be discharged from the role of executor. A trust distribution can be more informal, with a letter to the beneficiaries explaining the assets received, debts and costs paid, and the distribution of the remaining assets.

This is not intended to be a detailed explanation of all the steps that are required to administer an estate, but only an overview of the basic procedures. For more information about your situation you may want to contact an attorney.

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