

## OUTLINE OF HOW A DECEDENT'S ESTATE IS ADMINISTERED

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This memorandum outlines the general course by which a decedent's estate is handled in the Commonwealth of Pennsylvania. This letter is not intended as legal advice, but as a general outline. The facts of a particular case may modify, sometimes drastically, the way in which a particular matter is handled.

There is a lot of information here, and it may appear to be very complicated. You must remember that we are talking about wrapping up a person's entire life. That is probably never going to be a simple process.

Some of the words in this memorandum are underlined, and are in a glossary of Estate Administration Terms, which I have prepared. This memorandum briefly describes the handling of the estate both of a person who dies with a Will and of a person who dies without a Will. Some of the things that happen, when there is a Will are different, and some are the same or very similar.

When a Pennsylvania resident dies without a Will, they die intestate, which literally means "without a Will." Upon filing a Petition with the Register of Wills, which includes a statement that no Will has been found, the Register of Wills normally appoints an Administrator of the estate, as personal representative of the estate. A personal representative is the person responsible for winding up the decedent's affairs. The person who will be appointed depends upon their relationship with the deceased. Preference is given to adults who have not been declared incapacitated, in the order in which they would take portions of the estate, under the intestacy law. A person who would otherwise be qualified to administer the estate may file a renunciation with the Register of Wills, asking that someone else be appointed instead. The renunciation only gives up the right to administer the estate. It does not waive the right to inherit the interest in the estate.

If a person has a Will, then they normally appoint, in the Will, an Executor or Executrix to handle their affairs, and the Register of Wills appoints that person as the personal representative. In the event that the person dies with a Will, but no one named in the Will as Executor or Executrix can perform the duty, then the Register of Wills would normally appoint an Administrator C.T.A., which is an abbreviation of the Latin meaning, "an Administrator with the Will attached." The Administrator then acts as though he or she had been appointed as Executor/Executrix. Just as a person who could be an Administrator can file a renunciation, a person named in the Will as an Executor or alternate Executor can file a renunciation.

In order to open the estate, the personal representative must appear before the Register of Wills, present a Petition, take an oath and pay the filing fees. The fee is largely determined by the estimated size of the estate. If you underestimate the size of the estate, which is often what happens, the Register of Wills will bill you for the difference, at a later point, once the estate's size has been determined. The Register will issue Letters Testamentary (for a Will) or Letters of Administration (if no Will). The Register will also issue what are commonly known as Short Certificates. These are a document under seal, which is primary evidence of your authority to administer the estate. These are used to show to banks, stock brokerages, real estate title companies and so forth, that you have the legal authority to act on behalf of the estate. Because they are often only accepted for a limited time after they are issued, and they can be issued at a later date, upon payment of a small fee, one normally only orders a few of these at first.

After a person has been qualified as the personal representative of the estate, they are required to advertise this in a newspaper of general circulation, in the County in which the letters are granted, and in the official local legal journal or paper of record. In Allegheny County, the Pittsburgh Legal Journal and Pittsburgh Post Gazette are used to publish the estate notices. In addition to advertising the letters, there is a requirement that notice be given to all beneficiaries, and persons who would inherit under the intestacy laws, if there were no Will. Proof that the Notice has been given must be filed with the Register of Wills. (RW 07 Form for Notice of Estate Administration and RW 08 Form for Certification of Notice under PA O.C. Rule 10.5

One of the first steps a personal representative normally takes is to open an estate checking account. In order to do this, you have to apply for a Federal Tax Identification Number, for the estate. Most commercial banks will do the application for you, when you open the account. Because of the Patriot Act, when you open the account, you have to give your Social Security number, and copy of a government issued photo ID. As a lawyer, I frequently open up the accounts for my clients. Once you have the estate checking account open, you can, and should, close out any bank accounts that the deceased had, and transfer the funds to the estate checking account. When I am handling an estate, I ask that the client allow me to keep the estate checking account check book in my possession, but the checks can only be signed by the client. In that way, I can make sure that checks are not issued from the estate account, for any purpose that is not related to the estate. That would be a violation of the law, and conceivably a criminal offense. It also allows me to make sure that we know what checks are issued by the estate, which is critical information at a later point, in the process of winding up the estate. I cannot, however, spend any money however, as I cannot sign the checks.

If the deceased had other assets, such as stocks or bonds, we typically put those in the name of the estate. The process depends on what stocks or bonds or brokerage accounts are available. If the deceased had an automobile, it is typically sold or transferred and that, again, depends on how the automobile is titled, whether there is any loan against the automobile so that there is a lien, and a lot of other factors that are too detailed to go into in a general letter.

If the deceased had life insurance, the money is typically paid to the beneficiary on the policy. Although usually not considered part of the estate for Pennsylvania Inheritance Tax purposes, I am always willing to assist in collecting a life insurance policy. If the deceased did not have a designated beneficiary, or all of the designated beneficiaries are deceased, then the money would normally be payable to the estate. Either way, the money is not taxable, for the purposes of the Pennsylvania Inheritance Tax, which I will discuss further below. It would be part of the estate, for Federal Estate Tax purposes, but that currently is a fairly unusual problem.

The procedure of gathering up the assets, is sometimes referred to as "marshaling the assets." When the personal representative has a list of most of the assets, he or she is supposed to file an inventory of the estate, with the Register of Wills. The inventory is a statement of the property that the personal representative has taken under his or her control, and is now responsible for. In Allegheny County the inventory is generally filed simultaneously with the Pa Inheritance Tax Return. Filing fee depends on the size of the probate estate

The next task, which is usually done at the time, actually, as you are collecting or "marshaling" the assets, (and sometimes has to be done even in advance of that,) is to determine what the estate's debts are. It is desirable to try to determine, as soon as possible, what debts the deceased owed. You want to have a full list of them, even if they have been paid by a family member, rather than out of the estate assets. The reason that you want to have all of the debts is, that they are deductible against the estate, and help to reduce the size of the estate, for inheritance tax purposes. You also need to determine the administrative cost. Included in these debts are the funeral bill, the grave marker, a funeral breakfast or lunch. This can be deducted even if it was self-catered, if you can produce or document grocery purchases. (In other words, you buy groceries and have a lunch in your own home.) Other expenses are the probate Petition, legal advertising, lawyer's fees, etc.

If the deceased had joint property, it requires slightly different handling. The nature of the joint ownership is critical. If the property is between a husband and a wife, and owned "by the entirety", then the property is not part of the estate at all, and is not taxable for estate purposes. It automatically becomes the property of the surviving spouse. If it was owned as "joint tenants with rights of survivorship", which is available between a husband and wife or anyone, then the *assumption* is that half of the property belongs to the deceased, and the other half belongs to the survivor. The entire property automatically goes to the survivor(s). Typically the estate still has to pay the inheritance tax on the part that belongs to the deceased. There is a *rebuttable presumption* that there is a 50/50 ownership between the survivor and the deceased here. That may not be true, and it may be to the estate's advantage to make another determination. A third form of joint ownership is tenants in common. It is usually found in business relationships, although it can result from inherited property, which has never been divided, or it can be intentionally created, for some reason. The decedent's interest in the property eventually has to be sold, either to the survivor or a third party. For tax purposes, the interest that deceased had is taxable as part of the estate.

The Pennsylvania Inheritance Tax is due nine months after death. The tax is based on the

net estate. You add up the value of the assets, and deduct the cost of the administration of the estate, and the decedent's debts, that are paid by the estate. The difference is then taxed at a rate that depends on the relationship of the deceased to the beneficiary. The *current* rates are as follows: between husbands and wives 0%; between parents and children, grandchildren, or other lineal relationships 4.5%. Transfers between siblings are 12%. Except for transfers to charitable organizations (0%), all other transfers are 15%.

You can get a small discount by paying an estimated return, within three months of the date of death, which is sometimes done with larger estates. You can get a six month extension, on the time to file the return, but not on the time to pay the tax, by requesting this in writing. In extraordinary cases, you may be able to get an extension of time to pay the tax. Taxes that are not paid within nine months, are subject to interest. Although the Inheritance Tax Bureau talks about interest and penalties, I have not seen any penalties. The interest rate is tied to the prime rate and changes each year.

One of the deductions that may be available on the inheritance tax is the family exemption. A person who is living with the deceased, as part of his or her household, is entitled to \$3,500.00, from the estate, without payment of inheritance tax on it. There are a few more rules on this, but it is a frequently available deduction.

Two other deductions that are available, are the cost of an Administrator or Executor's commission (i.e. fee) and an attorney's fee. Administrators or Executors who are also beneficiaries of the estate, frequently do not take commission, because the commission is taxable income, whereas the beneficial share of an estate is not subject to income tax, for either Federal or State income tax purposes.

Besides the inheritance tax, there is the possibility, in larger estates, of a Federal Estate Tax. The Federal Estate Tax is in a state of change, at the moment. The Congress has created what lawyers are sometimes referring to as a "moving target." It depends what year the deceased dies in, as to what tax would apply. Since the estate tax, as it is currently enacted, will not apply to anyone who has an estate for of less than \$5.4 million<sup>3</sup>, I am not going to discuss this at this point.

In addition to the inheritance tax, and the remote possibility, for most people of a Federal Estate Tax, the personal representative of the estate is responsible for seeing that the deceased's final Income Tax Return is prepared and filed, and any taxes that are due are paid. This can range from being fairly straight forward, and occasionally unnecessary, to fairly complicated.

The personal representative usually also has to file a Fiduciary Income Tax Return. This is similar to the Individual Income Tax Return, but reports earnings by the estate. The federal tax rates on the earnings can be quite high, but there is no tax if the earnings are distributed, during the tax year, to the beneficiaries. Under those circumstances, the beneficiaries pay the tax on whatever earnings are distributed. This is another topic which is a little too complicated to go

into, in a general letter, and sounds worse than it usually is. It is, however, something that usually has to be done.

When the estate is finally ready to wind up, it is usual for the personal representative to prepare what is known as a fiduciary accounting. This lists all of the things of value that have come into the estate, how much they were valued at, and how the money has gone out. It shows any distributions which have been made to the beneficiaries prior to that time, plus proposed distributions that are to be made to finalize the estate. It is, frankly, a rather detailed document, and it is one of the reasons why you want to allow the attorney to hang onto the estate check book, and keep the financial records.

When the account has been prepared, there are two options. You can obtain a Family Settlement Agreement, between the personal representative and the other beneficiaries, which basically says that the beneficiaries have seen the account and accept it and release the personal representative from any further liability. Typically they are also asked to promise that if a third party comes up with a claim, they will pay a *pro rata* share back to the personal representative. The reason is that a family settlement agreement does not cut off the rights of third parties. For that reason the personal representative may wish to file the account with the Orphans' Court, together with a Petition for audit of the account, and a final distribution.

Under those circumstances the account is filed with the Court, and notice is given to all interested parties, including any creditors. The Court schedules a hearing date, by which time all claims and objections must be filed. If there are no claims or objections to the account, on the date of the audit, then the Court usually approves the account, and payment is made to the beneficiaries and the account is closed. The one area, however, where the account really is not closed by this process, is that the Federal Government can still take the position that there are taxes due. There are ways of asking the Internal Revenue Service to close out a decedent's tax accounts quickly, and though there is no guarantee that this will be done, it is sometimes a prudent thing to do.

There are a number of other minor points about the estates. There is a requirement, under the Pennsylvania Court Rules, for periodic status reports to be filed until an estate is closed. (RW 10) There may be other things, which are not mentioned in this letter. Nothing that can be written about the probate administration process is going to give you a full comprehension of the possible issues that can arise. As I said before: you are winding up a person's entire financial affairs, for a life time, in a relatively short period you can understand why it is a little more complex, and time consuming than you may think it should be. There is a temptation, I think, to feel that it is too complex. That may actually be true, in some states, because other states have some very difficult probate laws. Pennsylvania is not one of those states.

I hope this is helpful information.

**GLOSSARY**

**Administrator:** The personal representative of a person who dies without a Will or intestate.

**Administrator CTA:** A person named as personal representative for an estate of someone who died with a Will where, for some reason or other, the person named in the Will as executor or executrix and any alternates are not available to administer the estate.

**Estate Checking Account:** An account in the name of the estate, and using the estate's tax identification number, which is opened to act as repository for estate funds, and for making payments.

**Executor/Executrix:** The personal representative of an estate named in a Will.

**Family Exemption:** Property which is exempt from tax for Pennsylvania Inheritance Tax purposes, and is essentially exempt from the probate process. The maximum amount is \$3,500.00, and the exemption must be claimed only by a family member who was living with the deceased at the time of their death.

**Family Settlement Agreement (or just Settlement Agreement):** An agreement by the personal representative and all of the beneficiaries, that all of the assets of the estate have been accounted for. A Family Settlement Agreement releases the personal representative from further responsibility to the beneficiaries. It does not provide a release of claim by third parties who might claim assets from the estate.

**Federal Estate Tax:** A tax imposed upon a decedent's estate by the Federal Government. The size of the estate taxed currently depends on what year the deceased dies. The Congress has been debating the Federal Estate Tax, on and off, for a number of years.

**Federal Tax Identification Number:** A number issued by the Internal Revenue Service, sometimes known as an Employer ID number, which is used by the estate rather than a Social Security number, for identifying tax matters. Generally speaking, the estate does not use the deceased's Social Security number, but rather the Federal Tax ID number.

**Fiduciary Accounting:** A statement prepared by the personal representative of the estate, which shows all of the assets of the estate, all the income received by the estate, and all of the money paid out by the estate. The account is usually very detailed and can be quite arduous to create and balance.

**Fiduciary Income Tax Return:** Income which the estate earns, after the decedent has died, must be reported to the Internal Revenue Service and the Pennsylvania Department of Revenue, for each year from the time the decedent dies until the estate is finally resolved. This is reported

on the forms 1041 and PA 41.

**Final Income Tax Return:** If a person was required to file a tax return in the year that he or she died, then his or her personal representative is responsible for filing that final return. This is reported on the forms 1040 and PA 40 that most people are familiar with.

**Intestacy Law:** The law which determines the allocation of the estate of a person who dies without a Will.

**Intestate:** Literally "without a Will". The word used to designate the estate of a person who dies without a Will.

**Inventory:** A list of the assets in the estate, which the personal representative has taken charge of, and assumes responsibility for. When the personal representative prepares a final account, the starting point will be the assets listed in the inventory.

**Joint Property:** Property which is owned by more than one person.

**Joint Tenants by the Entireties:** A form of ownership between a husband and wife. The property is considered to belong to the marriage rather than to the husband or the wife individually. Upon death of one party, the other party succeeds to the entire interest.

**Joint Tenants in Common:** Property which is owned jointly between two or more persons. Upon the death of any owner, that owner's interest is part of their estate. The other joint tenants do not take anything more than they already had as a result of the death..

**Joint Tenants with Rights of Survivorship:** A form of ownership in which two or more persons own property and, upon the death of any one of them the property becomes the property of the survivors without passing through the decedent's estate. This sounds a little bit like a tenancy by the entirety which is only available between a husband and wife, but there are differences as long as all of the owners are alive.

**Letters of Administration:** The document issued by the Register of Wills, which officially recognizes an administrator as having been qualified to administer the estate of a person who dies without a will.

**Letters Testamentary:** The document issued by the Register of Wills, which officially declares that a particular executor or executrix has been appointed as the representative of a decedent's estate, and that a particular Will has been admitted to probate. A copy of the Will is normally attached to the Letters Testamentary.

**Orphans' Court:** The Division of the Court of Common Pleas which has jurisdiction over, among other things, decedent's estates. The Orphans' Court is the Court to which a decision of

the Register of Wills may be appealed. It is the Court that has jurisdiction to review the actions of a personal representative, and to order the personal representative to make a different distribution of funds than the personal representative may have proposed.

**Pennsylvania Inheritance Tax:** A tax imposed by the Commonwealth of Pennsylvania on the right to inherit property from a decedent. The rate of tax depends upon the relationship of the person inheriting to the deceased.

**Periodic Status Reports:** The Pennsylvania Supreme Court requires personal representatives to decedent's estates to file, from time to time, status reports indicating whether the estate is still open or not, and how much of the estate remains to be disposed of.

**Personal Representative:** The generic title for the person whose job it is to wind up a decedent's affairs. The personal representative is normally the administrator (for a person who dies without a Will) or the executor or executrix for a person who has a Will and names a personal representative in that Will.

**Petition for Audit:** When a personal representative has completed the administration of the estate, the personal representative may either obtain a family settlement agreement or petition the Court for an audit of the account. The audit provides notice to all beneficiaries and creditors, and any objections to the account are then filed with the Court, and resolved by the Court. At the end of the process the Court enters an order, ordering distribution and relieving the personal representative of further liability, both to the beneficiaries and to creditors.

**Register of Wills:** A quasi judicial official, in the Commonwealth of Pennsylvania, who issues Letters of Administration, and Letters Testamentary. In the event that there is a conflict between persons seeking Letter of Administration or Letters Testamentary, the Register of Wills usually makes the initial determination as to whom the letters should be granted. The Register's decision may then be appealed to the Orphans' Court.

**Renunciation:** A document in which a person who has rights to act as an administrator of the estate, or is named in a Will as executor or executrix, gives up that right in favor of someone else. The renunciation does not surrender any rights to inherit property from estate.

**Short Certificate:** A document issued by the Register of Wills as primary proof that a particular person has been issued Letters Testamentary or Letters of Administration.

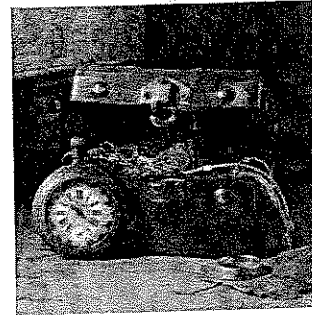


## ESTATE ASSETS

The personal representative must work closely with his or her attorney to identify, value, disclose, and distribute assets of the estate to the proper beneficiaries. Assets of the estate include all assets owned by the decedent at the time of his or her death. These assets can include tangible and intangible personal property, real property, jointly owned property, probate and non-probate assets.

### CHECKLIST: LOCATING ESTATE ASSETS

The personal representative should diligently search for assets. Some helpful suggestions include:



- Notifying the Post Office, in writing, where the decedent's mail should be delivered. All mail should be reviewed to ascertain financial information regarding the assets and liabilities of the decedent.
- Searching the decedent's home or place of business for other asset and liability information.
- Considering whether litigation should be instituted on behalf of the estate for any cause of action related to the decedent's death.
- Reviewing personal income tax returns for several years prior to the decedent's death to locate sources of income.

When the personal representative meets with a qualified and experienced PA estate administration lawyer, the lawyer will likely request the following documents to facilitate the estate administration process:

- Original Last Will & Testament of the decedent
- Death Certificates
- Copies of bank and brokerage statements and the values at the date of death
- Copies of any stock or bond certificates that the decedent may have held
- Copies of any general or limited partnership certificates or agreements
- Copies of any mortgages, mortgage notes, and related amortization schedules
- Copies of IRA, pension, or retirement plans and the values at the date of death
- Life insurance policies
- Past three (3) years' state and federal income tax returns (Form 1040)
- Copies of any Gift Tax Returns (Form 709) that have been filed
- List of all personal property the decedent owned with its estimated value
- Safe deposit box numbers, location, and inventory
- Any other evidence of assets the decedent owned not otherwise noted