



Picking up the pieces

What to do when a loved one dies

Losing a loved one is a trying time in life. Funeral arrangements, obituaries, and finding time to grieve can become overwhelming. However, it's also important to pick up the pieces and start to address the many things that may need to be resolved relating to the deceased's final affairs. The following details some items to consider knowing that every person's situation is unique.

FIRST STEPS

One of the first items to address after the funeral is obtaining death certificates. Most funeral homes or similar services can help provide death certificates and/or the paperwork necessary to obtain death certificates. Be sure to order multiple certified copies (usually 10-20) so that you will have them available as some institutions may require keeping a certified copy of the death certificate for their files. You may also need to locate birth certificates, marriage certificates, passports and/or military discharge documentation to assist with other various post mortem responsibilities.

Another immediate step when a loved one dies is to try and obtain the original estate planning documents. There may be a will, a trust or both. These documents could either be in a safe deposit box or it may be among papers around the house. Finding the deceased's estate planning documents will let you know who the deceased wanted to handle their final affairs, along with how assets are to be distributed. In many cases an original document will be required, though some jurisdictions have limited rules that may allow a copy of a will or trust to be relied upon. If you cannot locate the documents try to contact the deceased's estate planning attorney to see if the law firm either retained an original or advised the client to deposit it in a certain location.

If the deceased had a will it will name someone as the personal representative (also known as the executor/trix). The personal representative ("PR"), if they choose to accept the position and are properly appointed by the probate court, will be the primary person responsible for handling the deceased's final affairs.

If the deceased didn't have a will, also known as dying "intestate", then any interested person may serve as PR. To achieve this one must petition the probate court to request such an appointment. Such a request may be contested by other interested parties.

If the deceased had a trust, the named trustee will have certain responsibilities over trust assets, and will likely have to coordinate with the PR regarding various matters. However, the PR is generally the party ultimately responsible for a deceased person's final affairs.

If the deceased had a safe deposit box, determine who, if anyone, has access to the box. If a key cannot be located or if there is not a living joint signer, the PR may be allowed access. If no one can be found to have access to the safe deposit box many banks are willing to file a request with the probate court to allow the opening and inventorying of the safe deposit. This would allow reviewing the contents to determine if there is a will, and if so, who the PR may be.

INITIAL DUTIES OF THE PERSONAL REPRESENTATIVE

If you accept the role of PR, you are the primary person responsible for handling the final affairs of the deceased. After gathering the appropriate information, the next step to consider is to meet with an attorney. The attorney can be the attorney that drafted the estate documents, or you can select your own attorney. You should select an attorney well versed in estate and probate matters as there are several formal steps to complete.

Depending on the complexity of the estate, you may also want to consider bringing in the deceased's CPA. The CPA will be able to assist with locating various account holdings and also with any final tax concerns the deceased may have had. If you have an estate that may owe federal or state estate/inheritance tax, the CPA could be utilized for these filings as well.

Conduct an initial professionals meeting

As PR it may be a good idea to conduct a meeting with all of the professionals you may utilize during this process. This could be the attorney, the CPA, the financial advisor, etc. Depending on the complexity of the estate you may want to have a joint meeting with all of these professionals.

In your meeting with the attorney have them explain to you the basic probate and/or trust administration process. Typically the attorney will prepare and file all appropriate paperwork with the probate court. As PR you may be asked to review and sign such paperwork, and ultimately you are responsible for seeing that all of the paperwork is accurate and filed appropriately.

During your meetings you should also review whether the estate needs its own tax identification number ("TIN"). Most estates that will have earnings of some kind (interest, dividends, etc.) will require a TIN. Be sure to agree upon who will be obtaining the TIN, the PR, the attorney or the CPA.

If you aren't the PR, but you have an interest in the estate as a potential beneficiary, work with the PR to help streamline the process. You should consider monitoring the PR's actions to assure your interests are protected and to provide any assistance if necessary.

While the attorney will likely do most of the work in probating the estate and/or advising on the administration of a living trust, there is a lot of discovery work that the PR must do as well. Discuss in your initial meeting what next steps everyone should take. This could include:

- Identifying all of the deceased's assets (homes, cars, investment accounts, bank accounts, etc.)
- Reviewing and identifying the deceased's known debts
- Contacting the social security office to stop/start appropriate benefits
- Reviewing asset titling to determine if there are accounts held as joint tenants with rights of survivorship and/or accounts with transfer on death features
- Identifying life insurance policies and the designated beneficiaries of those policies
- Reviewing insurance coverage for automobiles and homeowners
- Securing "at risk" items like vehicles, firearms, etc.

Each of the professional team members may have information on these issues. As PR you need to coordinate who will be responsible for these various tasks.

Information gathering

There are multiple other items that may need to be reviewed. A good starting point can be to review the deceased's mail and to forward the mail to the PR. This often allows the PR to identify financial accounts (brokerage/bank statements coming in), verify outstanding debts (unpaid bills, credit cards, etc.) and other information necessary to complete the administration of the estate. It is important to work with the probate attorney to determine what debts should be paid on behalf of the estate. Using estate assets to pay non-estate liable debts could cause the PR to become personally responsible for the improperly distributed estate funds.

You may want to consider consolidating assets in one location. Having a single estate account for securities and/or an estate checking account to handle various estate liabilities can help the PR to organize all of the deceased's outstanding assets. Work with your Benjamin F. Edwards Financial Consultant to see if consolidating assets makes sense for your situation.

For many estates, especially those with significant assets, it may take several months or even years to complete the administrative process. As PR you should consider whether to liquidate assets to cash or keep them invested. Going to cash can eliminate market risk, but can also dull the value of the portfolio while the estate is being wrapped up. Keeping assets invested can provide ongoing investment return, but the deceased's investment objective may not be aligned with the new estate's investment objective. Moreover, keeping investable assets exposed to market risk could be an issue. The PR should review the estimated length of time that the estate will be open, the ultimate beneficiaries of the estate and the ultimate use of the estate's funds to determine whether to rebalance or liquidate the estate's investments.

ONGOING PROBATE ESTATE ADMINISTRATION

Probate administration is generally a time consuming process. There are several items that must be completed. While each state and probate court process is unique, generally the steps to “probate” assets involve:

- Gathering all of the necessary data
 - Will, if there is one
 - All financial assets
 - Names and locations of appropriate relatives
 - Names and locations of beneficiaries
 - Debts owed by the deceased.
- Filing the will with the court and the court “proving” the will to be valid
 - If there isn’t a will the deceased died “intestate.” The state statutes will dictate where assets will pass
- The court appointing the personal representative
- Inventorying all assets and providing appraisals/values of said assets to the court
- Managing final expenses
 - Paying final debts
 - Negotiating any creditor’s claims
 - Filing final tax returns and/or federal/state estate tax returns
- Providing an open notice to all unknown creditors
- Dealing with any special situations (e.g. guardianships of minors or custodianships)
- Managing estate assets (selling/deeding the house, managing ongoing portfolios, etc.)
- Providing a final accounting to the court and requesting the right to settle the estate and distribute the assets to the appropriate beneficiaries.

WHAT IS PROBATE?

If someone owned property individually which was not designated to pass to named beneficiaries or surviving joint owners (such as a transfer-on-death or a beneficiary designation in an IRA), then such property must be “probated.” Generally probate is the court controlled process to ensure the deceased person’s debts are paid and that their assets are re-registered with a clear title to the new owner.

Probate has advantages, including judicial oversight to allow for the process to be orderly and to follow the letter of the law. However, probate is often cumbersome, costly and time consuming. Also, probate details are generally public record.

TRUST ADMINISTRATION

Many people now use revocable living trust planning as their primary estate planning vehicle. When the creator of a trust passes away, the trust usually becomes irrevocable. If the grantor titled assets in the trust while they were living there is no need to probate those assets. Assuming the creator of the trust was also serving as trustee at the time of their death, the successor trustee is charged with assuming responsibility for the trust administration. Similar to a probate proceeding, but without the involvement of a court, the successor trustee has several steps to take in their fiduciary capacity:

- The trustee must locate and take control of all trust assets

- The trustee should review the terms of the trust, likely with the aid of an attorney, to see what steps are required in the trust administration with the passing of the deceased. Those steps may include:
 - Obtaining a TIN for the trust
 - “Splitting” the trust assets into new trusts (a credit shelter trust, a trust for a child, etc.)
 - Distributing trust assets outright to beneficiaries
- The trustee will need to coordinate with the PR regarding the deceased’s debts and obligations. Moreover, the trust may be the recipient of probate assets. Most trust plans call for a “pour over” will, which means the terms of the will simply state that any assets that may pass through probate are to be poured over to the trust for management/distribution.
- The trustee may have to provide notice to certain trust beneficiaries of their interests in the trust. For example, the Uniform Trust Code, adopted in 25 states, can have default provisions for the trustee to alert certain trust beneficiaries of the trust’s existence and their rights related to the trust within 60 days of becoming successor trustee.¹
- For trusts that distribute outright to the beneficiaries the trustee must determine whether to liquidate assets or distribute them in kind.
- For ongoing trusts the trustee may need to address the asset allocation for the new trust terms and beneficiaries. The trustee will be required to invest trust assets not only for the current beneficiaries, but also the remainder beneficiaries. Consider working with your Benjamin F. Edwards Financial Consultant to review an appropriate asset allocation and to consider consolidating assets to make trust administration easier going forward.
- If there are aspects of trust administration that the trustee cannot handle, the trustee is obligated to hire appropriate professional assistance. This may be an attorney, a CPA, a professional financial consultant, a real estate manager, etc.
- Until the trust terminates, the trustee will be responsible for filing an annual tax return on behalf of the trust.

TAXES

There are a multitude of various tax consequences when wrapping up someone’s estate. While not all of these may apply, consider the following:

- Final personal income tax return: Filed by the PR for the portion of the tax year up to the deceased’s date of death.
- Estate income tax return: While the estate is open, if it earns enough income, the PR will have to file an estate income tax return utilizing tax form 1041.

¹ UTC §813, 2010.

- If the deceased has an estate large enough for a federal estate tax return, a form 706 estate tax return is due nine months from the deceased's date of death.
- If a state estate/inheritance tax applies, the PR will have to file a tax return in each applicable state. These filings generally follow the federal rule of being due nine months from date of death, but some states have shorter or longer time periods.
- If an ongoing trust is created the trustee must file a form 1041 income tax return each year a trust is in existence.

The various tax filings can be complex, and time is of the essence for all of them. The PR should consider engaging a tax professional to advise on the applicable tax issues for the estate.

OTHER ASSETS

There are numerous other assets that may need to be addressed either in partnership with the probate or trust process, or independently. Just a few examples:

- Non-probate assets: Annuities, IRAs, jointly titled assets, etc. may need to be addressed or re-registered. This is typically the surviving beneficiary's responsibility, but on occasion PRs or trustees may get involved as well.
- Insurance: The PR or the named beneficiaries typically deal with insurance proceeds. These assets usually pass outside of probate. Review all known policies to see whether death proceeds are due, including the fact that some credit card companies now have life insurance components. Don't simply disregard a policy that may seem old or that may appear to have lapsed as there may be significant value remaining in those policies.
- Employer plans: If the deceased was still working, review whether a 401(k) or other type of retirement plan may be held with the employer. Moreover, many companies also have company sponsored life insurance policies that may apply.
- VA benefits: If the deceased is a veteran, there could be benefits available from assisting with funeral costs to ongoing benefits for heirs. Check with the local VA office to review possible benefits.
- Social Security: If the deceased was receiving Social Security you need to contact the local Social Security Office to cease benefit payments. Any payments received after death will have to be repaid to Social Security. For surviving beneficiaries there may be several different options to receive ongoing benefits earned by the deceased. Reach out to the local Social Security office to review your options.
- Digital assets: Many people have digital assets that may need to be addressed. Facebook page content, email accounts, online banking or investing, ongoing electronic bill payments, etc. may all be a concern. This newer field is also difficult to navigate as there aren't established guidelines for how to deal with these various assets. Work with your professional team to manage these issues for your deceased loved one.

MOVING ON

Losing a loved one is hard enough; dealing with the complexities of finalizing their financial affairs can be daunting. Remember that major decisions like selling the house, moving, changing the portfolio significantly, etc. do not need to be made immediately. Spend the first few months after a loss to simply organize what steps need to come next. Your Benjamin F. Edwards Financial Consultant can help with assessing the portfolio, providing information on the deceased's holdings, and helping organize next steps with your professional team.

Eventually things will stabilize. You will be able to complete this process and move on to more enjoyable things. Moreover, if you hit a few bumps in the road you can take the lessons learned and apply them to your own situation when the time comes. Consider sharing those lessons with loved ones as well so they can have a smoother transition for their own situation. The process is never easy, but with proper planning and organization you can make it through the necessary steps when a loved one passes away.

IMPORTANT DISCLOSURES

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