

Things To Do Immediately After the Death

The decedent's family or next of kin should make funeral or other arrangements for the disposition of the body. Location of the following documents is helpful: burial certificate, deed to a funeral plot or a prearrangement contract with a funeral home.

Once the funeral home is employed, they will take care of the remains and make preparation for the funeral, burial, or cremation and for ordering Death Certificates for the family. One should obtain several Certified Copies of the Death Certificate from the funeral home because they will be needed to transfer the decedent's property later.

The funeral home will usually allow time before full payment is due. That should give the family the opportunity to determine how the funeral costs will ultimately be paid. The estate usually pays the expenses of the funeral and burial or cremation but the funds are not often immediately available. If a family member pays the costs, the estate can later reimburse the family member.

Look for a Will

A will is usually stored with the decedent's important papers. It might be stored in a safe deposit box, or at the local Register of Wills. Wills usually have a clause that appoints a Personal Representative. That named person will have priority to become the Personal Representative.

If there is no Will, or if the named person is unable to act, the Register of Wills will appoint a Personal Representative. The order of priority begins with a surviving spouse, if there is no surviving spouse, the decedent's children would be next in line, then the next of kin and finally, any interested adult.

Opening the Estate and Appointment of Personal Representative

A person acting as an agent under a Durable General Power of Attorney for the decedent, or as an appointed Guardian who had authority to sign the decedent's checks, can no longer legally do so as of the moment after the decedent's death.

Once the agent's or guardian's power has ceased, the only way he or she can legally access the decedent's bank accounts, safe deposit box or any of the decedent's other assets is to become Appointed as the Personal Representative of the estate. Another name for the Personal Representative is the Executor (male) or Executrix (female).

The experience of administering an estate can be daunting and complex. It may be wise for the Personal Representative to seek professional assistance through an attorney who is experienced in Probate Law. Generally the attorney will prepare all of the paperwork and do all of the necessary things to settle and close the estate.

Administering the estate may include preparing the Petition for Probate, the Inventory and Accounting, having appraisals done, setting up a Federal Tax ID, opening and managing an estate account, preparing individual and estate tax returns, selling or disposing of real and personal property, maintaining property, collecting and paying debts, maintaining insurance, transferring title to stocks and other legal assets and whatever other tasks may come up during the approximately year-long probate process.

With an attorney representing the estate, the Personal Representative would only need to sign documents as they are presented, otherwise it is the Personal Representative's duty to complete all the necessary tasks involved in administering and settling the estate.

The Personal Representative

The person to become Appointed as the Personal Representative will "open the estate" by preparing a set of documents provided by the Register of Wills known as a Petition for Probate. A personal trip to the Court is necessary to present and file the Petition for Probate and the original Will. The Court will set a bond and arrange for legal notice through a local newspaper. Once these steps are completed the Court will issue "Letters of Administration," which formally gives the legal powers to the Personal Representative to act on behalf of the estate.

Once appointed, the Personal Representative should begin the process of closing out the decedent's accounts, notifying the decedent's creditors of the decedent's death and letting them know that they have to file claims against the estate. If the creditors are not given notice, they have six months from the date of death to file a claim.

The Decedent's Assets

If the decedent died with a Will, the Will determines how the property would be distributed. If the decedent died without a Will the property would pass as follows:

1. If there is no surviving spouse, then everything goes to the children.
2. If there is a surviving spouse and no children, then everything goes to the spouse.
3. If there is a surviving spouse and no children but there is a surviving parent, the spouse takes \$15,000.00 plus one half, and the remaining half to the surviving parent.
4. If there is a surviving spouse and minor children, the spouse takes one half and the children share equally in the remaining half. If the children are adults, the spouse takes \$15,000.00 plus one half, and the remaining half goes to the adult children.
5. If there is no surviving spouse and no children the next in line would be the decedent's parents, then brothers and sisters, then nieces and nephews and ultimately, if there are no heirs at law, the assets would be distributed to the County Board of Education.

Basic Responsibilities of the Personal Representative

- ◆ The Social Security Administration should be contacted if the decedent was receiving retirement benefits.
- ◆ If the decedent worked for the Federal Government the Office of Personnel Management should be contacted.
- ◆ There may be death benefits available from OPM and from the military if the decedent served in the armed forces.
- ◆ Filing of final Federal and State tax returns by the April 15th deadline.
- ◆ The Decedent's Estate return will need to be filed in the following year.
- ◆ Maintenance of the decedent's property.
- ◆ If the decedent owned a home it is important to preserve the condition of the property. The estate will be responsible for the mortgage, if any, and the maintenance and upkeep until it is sold or distributed to the heirs.
- ◆ Notification of the decedent's automobile insurance company.
- ◆ Generally it is not advised to drive or let anyone drive the decedent's car before the title is transferred legally.

Make It Easier For The Survivors After the Death

There are several legal and non-legal estate planning steps that a person can take that can make the process during a serious illness and after death much easier for the survivors. A few examples of common estate planning techniques are:

1. Prepare a Will. This lets you decide who gets your property and who makes the decisions after your death.
2. Arrange for prepaid funeral services. This makes it easier on the survivors, both emotionally and financially.
3. Consider a Revocable Trust. This allows the owner of real property to name a successor trustee to deal with the property in the event of incapacity. After death, the real property passes to the named beneficiary without going through the probate process.
4. Create a Durable Power of Attorney. This allows a person to act as an agent for the grantor and allows the agent to do virtually anything the grantor could do, even if the grantor becomes incapacitated. This power ends upon death of the grantor.
5. Create a Living Will. This allows a person to appoint a medical decision maker in the event the person cannot make their own decisions. It also prevents the hospital from using electroshock to restart your heart, to place you on an artificial respirator or to give food or water through tubes if it is determined that you are suffering from a terminal illness in its end stage, or that you are injured or ill without having hope of recovery.

A Legal Guide To Settling A Decedent's Affairs

This is always a difficult and emotional time for the family, yet many important decisions and arrangements must be made right away. This pamphlet is to offer basic guidance for settling simple estates and is not meant to take the place of comprehensive legal advice.



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