

WHAT TO DO WHEN A LOVED ONE DIES

Presented by:

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AFTER THE DEATH OF A LOVED ONE

- Mourning & Grief
- May be in a state of uncertainty about what to do next
- Without a plan, tension can arise over who must take responsibility for arrangements and costs
- Confusion

WHO IS IN CHARGE?

- After someone dies, the person who was named in a **Power of Attorney** no longer has the authority to conduct the affairs of the decedent
- After the decedent dies, a court-appointed **Guardian** is no longer necessary and any powers are no longer in effect
 - The court will generally require the guardian to provide a final accounting
- Generally a spouse or adult child takes initial responsibility for contacting family members and making arrangements
- If the decedent had a Will, the proposed Executor can help start the process
- If there is no Will, family members generally determine who will be the Estate Administrator

WHO TO NOTIFY UPON DEATH?

AFTER A PERSON DIES, YOU SHOULD NOTIFY THE FOLLOWING:

- If no doctor or hospice is present, contact 911, the person's doctor or the county coroner
 - Organ donation, body bequeathal instructions, etc.
- Close Family and Friends
- Employer (if he or she was working)
- Attorney
- Funeral Home
- Any Military, fraternal or religious groups the person belonged to
- Social Security Administration
- Tax Authorities
- Pension/Retirement/ Insurance
- Bank, Financial Advisors, CPA
- Credit Card Companies
- Utility Companies
- Department of Motor Vehicles

WHAT IMMEDIATE ACTIONS?

- Protect personal belongings in the home of the decedent
 - Any Pets? Minor Children?
 - Ensure the doors and windows are locked
 - Cancel newspapers and pick up mail
 - File a change of address form with the Post Office
 - Hold on bank and credit card accounts
- If necessary, can request the court issue a notice that no one is permitted to enter the premises
- Take rough inventory of cash and valuables ASAP before family members start to remove items

FUNERAL/ SERVICE ARRANGEMENTS

- Is there a Disposition of Remains Appointment (DORA)?
- Pre-planned Funeral Arrangements?
- Who Pays the Funeral Director?
 - Money from the estate is not yet available
 - Typically the named executor in the Will or other family members and later, will be reimbursed from the assets of the estate
 - If no estate assets, family members need to decide

WHERE ARE DOCUMENTS LOCATED?

- Ideally important documents will be organized, but not often the case
- At Home
 - Filing Cabinet
 - Fire Proof Safe
- Safe Deposit Box
 - Who has access?
 - Readily available?
- Fiduciaries Have Copies?
- Attorney's Office

WHAT DOCUMENTS?

See *Estate Administration Checklist*

- Estate Planning Documents - Wills; Trusts
- Taxes - Copies of past returns
- Real estate - Deeds; title papers; appraisals; records of renovations, additions and repairs; mortgages and receipts of payments, and records of purchase prices and closing and selling costs
- Finances - Bank statements; stock and bond certificates; mutual fund records; records of purchase dates and prices, dividend or interest payments and dates; savings certificates; savings passbooks; loan papers, list of credit cards
- Insurance and Retirement - Insurance policies; IRA documentation; pension and profit sharing plans; beneficiary designation forms
- Personal Documents - birth and death certificates; marriage licenses; adoption and custody papers; divorce and separation papers; property agreements; military records; and Social Security records
- Outstanding Bills

STARTING THE LEGAL PROCESS

- Before the decedent's assets can be divided or disposed of, the estate must go through Probate or an Estate Administration Proceeding
- If there was a Last Will & Testament = Probate
 - “Probate” is from the Latin “to prove”
- If there was no Will = Estate Administration
 - Laws of *Intestacy* governed by laws of the State

WHAT IS THE PROBATE PROCESS?

- All Wills must go through Probate before their provisions will be given legal effect
- A probate petition typically requests the Court take the following action:
 - Offer the Will to court to pass on its **Validity**
 - Approve the Appointment of the named **Executor**
 - Approve any named **Testamentary Trustees**
- Probated Wills are Public Record

WHAT TYPES OF PROPERTY?

- All property held in the decedent's name alone is subject to probate
- Property NOT subject to probate:
 - Jointly-titled property
 - Assets with specific beneficiary designations
 - Not payable to the “estate”
 - Property held in Trust

MONETARY LIMIT

- If the aggregate amount of the value of probate assets is \$30,000 or greater →
“Full” Probate Proceeding
- If the probate assets are valued at less than \$30,000 → Small Estate Proceeding
 - Still a proceeding in Surrogate’s Court



FILING FEES

- Probate Filing Fees
 - \$20,000 but less than \$50,000 \$215.00
 - \$50,000 but less than \$100,000
\$280.00
 - \$100,000 but less than \$250,000 \$420.00
 - \$250,000 but less than \$500,000 \$625.00
 - \$500,000 and over
\$1,250.00
- Small Estate Filing Fee
 - \$1.00

STARTING THE PROBATE PROCESS

- Use an Estate Administration Attorney
- File a probate petition with the **original** Will to the Surrogate's Court in the county in which the decedent was domiciled at the time of death
- Notice
 - All intestate distributees must be given notice of the proceeding and must consent to probate, even if they are not beneficiaries of the Will
 - If they refuse to consent, they will be Cited
- Family Tree

DYING WITH A VALID WILL

- Valid Will?
 - Capacity
 - At least two adult witnesses at signing
 - Witnesses cannot be anyone that you have named as a beneficiary in the Will
 - No handwritten changes/ additions
- If anyone believes that the Will is not valid, that individual may bring a Will contest by filing objections

PROBATE PROCESS

- If valid, the Court will issue **Letters Testamentary** to the Executor
- Executor will be responsible for:
 - Identifying and creating an inventory of all property
 - Collecting the assets, accountings
 - Obtaining appraisals
 - Publish notices to creditors
 - Paying debts, taxes, and administrative costs
 - Distributing the property as the Will directs
 - Filing taxes - final 1040 tax form; estate tax return 706

HOW LONG DOES IT TAKE?

- Minimum 7-9 months from the date of court appointment for simple estates
- Larger estates with complicated assets average 12-24 months
- Maximum Timeframe: Unlimited in the event of litigation or other complications
 - Litigation is **COSTLY**
- **Remember:** No access to assets prior to probate
 - Especially important for small business owners

WHAT BILLS TO PAY?

- A creditor can file a claim against an estate for payment of the debt
- The executor must pay the creditors from probate assets before a final distribution of money is made to heirs
- Priority creditors
- Beware of fraudulent claims
- If there isn't enough money in the estate to cover the debt, it typically goes unpaid
 - Unless Executor's improper handling of an estate

CAN A CREDITOR GO AFTER NON-PROBATE ASSETS?

- Not personally responsible
 - Family members typically are not obligated to pay the debts of a deceased relative from their own assets unless they co-signed documents with the decedent
- Relatives have protection under the federal *Fair Debt Collection Practices Act* but debt collectors may still call and write letters
 - Claims should be made against the estate only

HOW DO ASSETS GET DIVIDED?

- In Absence of a Plan - Distributees under NYS rules of Descent & Distribution
 - Surviving Spouse = \$50,000 plus $\frac{1}{2}$ remaining assets
 - Surviving Biological Children = Divide remaining $\frac{1}{2}$ by representation
- Without specific instructions concerning asset distribution, family members can be left guessing what a deceased person would want
- Terms of the Will or Trust
 - Executor generally exercises discretion
 - Splitting up material possessions among family members can be more acrimonious than dividing up financial assets
 - In some families, nothing brings out greed and long-time resentments like divvying up sentimental items
 - Becomes even more complicated when involves divorce, a blended family, 2nd/3rd marriage, or an unmarried couple

COSTS FOR PROBATE & ADMINISTRATION

- Court Fees
- Heir Search/ Publication
- Executors Commissions
- Legal Fees
- Service of Process
- Bond (if required)
- Accountant Fees
- Appraisal Fees
- Guardian Ad Litem (if required)
- Litigation Expenses (if applicable)

POTENTIAL COMPLICATIONS

- Complicated Assets
- Minors
- Incapacitated distributees or beneficiaries
- Predeceased distributees or beneficiaries
- Incarcerated distributees or beneficiaries
- Charities
- Creditors
- Disharmony
- Estate Taxes
- Unknown Heirs (Publication)
- Litigation/ Will Contests
- Out of State Property
- Foreign property, assets or beneficiaries
- Lawsuit proceeds or foreclosure proceedings

REASONS TO AVOID PROBATE

- Privacy
 - Avoid Court
- Minimizing Fees
- Avoiding Loss Due to Delays in Probate
- Protection from Will Contests
- Minimizing Administration Time
 - Property could be sold
 - Assets available
 - Beneficiaries could get inheritance quicker

HOW TO AVOID PROBATE?

- Create an Estate Plan
- Testamentary Substitutes
- Lifetime Gifts
- Trusts
 - Revocable
 - Irrevocable

FREE CONSULTATIONS

- We can help after the death of a loved one – Intestacy, Probate, Estate Admin., Trust Admin., Litigation
- Help you choose the Estate Plan that's right for YOU
- Assist with Long-Term Care Plan
- Appoints typically last about an hour

Don't Wait Until It's too Late

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