

MEMORANDUM TO PERSONAL REPRESENTATIVE

If you are accessing this memorandum because you recently lost a loved one, please accept my sincerest condolences for your recent loss. I realize that the death of a loved one can be a very difficult and emotional time.

I have developed this information to provide you (and other survivors) with some idea of what normally must be done to administer an estate in Iowa after a loved one has passed away. Please note that although this list is intended to give you an understanding of the estate administration process, it is not, nor is it intended to be, a substitute for competent legal advice.

The key to sorting after-death administration issues begins with how assets are titled (ownership). The legal title to an asset controls how that asset will be distributed. For example, generally speaking:

Trust Assets owned by a trust, are disposed of in accordance with the terms of the trust, and are not subject to probate.

Joint Tenancy is nothing more than right of survivorship. When a joint tenant dies, the remaining joint tenant or joint tenants get the asset. This is true whether there is a will, trust, or other document stating otherwise. Joint tenancy assets are not subject to probate.

Life Insurance proceeds generally do not go through probate so long as there is a living beneficiary that is not the estate of the decedent. Life Insurance proceeds are distributed to the named beneficiary or beneficiaries. Again, this is true regardless of what a will, trust, or other document states.

IRA, 401k or other income tax qualified plans generally have a named beneficiary, similar to life insurance. There are, however, potential significant income and estate tax issues associated with these types of accounts.

Assets owned in the name of the deceased person include the decedent's interest as a *tenant-in-common*. These assets are distributed by the terms of the decedent's will. If there is no last will, they will be distributed the way State law provides. These assets, depending on their value and state law, are subject to probate.

“Administration” or “settlement” of an estate after a death is a sobering responsibility. There are many legal, tax, accounting, and investment duties of an executor/personal representative, some of which impose personal liability on them. The responsibilities are such that Iowa law *requires* that an executor/personal representative be represented by legal counsel.

What follows is a **general summary** of concerns and requirements. It is not all-inclusive. The Huizenga Law Firm, P.C., is experienced and committed to assist the executor/personal representative in every step of the process.

Probate Administration

Immediate Concerns

(Immediate concerns typically relate to arranging Funeral or Memorial Services and determining the immediate needs of the survivors.)

- ◆ Arrange for care of minors or family members who are unable to care for themselves
- ◆ Arrange for Funeral and/or Memorial Services
- ◆ Arrange for care of pets or farm animals.
- ◆ Determine the immediate needs of survivors such as cash needs
- ◆ Stop the mail, newspapers and other deliveries as appropriate
- ◆ Locate and provide safekeeping for business and personal assets
- ◆ Locate and provide safekeeping for documents and records

Starting the Probate or Intestate Administration Proceeding

Probate is the legal name of the process of transferring property – the “estate” – from a person who has passed away to the beneficiaries named in his or her Will. Intestate Administration is the legal term used for this process if the person who passed away did not leave a will.

- ◆ Locate any Wills and/or Trusts, if any
- ◆ Select an attorney to represent the estate
- ◆ Collect names, addresses and phone numbers of the beneficiaries and immediate family
- ◆ Start to collect asset and debt or liability information

The Legal Process of an Estate Administration

After you have selected an attorney, he or she will handle any necessary legal filings with Surrogate’s Court and as such much of the following list will be done by, or at the direction of, the attorney.

- ◆ Obtain Waiver and Consent forms from the beneficiaries and/or heirs
- ◆ Prepare and file the Petition for Probate or Administration if needed
- ◆ Determine the need for Ancillary Probate (for out of state property)
- ◆ Prepare and file an Inventory of Estate Assets
- ◆ File Receipt and Release Agreements

Typical Executor or Administrator Duties

The main duties of an Executor or Administrator include the collection of assets, the payment of debts and expenses, and other miscellaneous duties. An Executor or Administrator should be careful regarding the payment of expenses as certain expenses are considered priority expenses which should be paid first. This is especially important if there are not enough assets to pay for all of the administration expenses and debts.

Collection of Assets

- ◆ Notify banks to arrange for opening safe-deposit boxes and prepare an inventory of items found in the safe-deposit boxes
- ◆ Collect any checking, savings or other bank accounts
- ◆ Contact Life Insurance companies to start the claim process
- ◆ Contact employers to collect any wages, death benefits or pensions due
- ◆ Collect all stock, bond and mutual fund share certificates and calculate date of death values for all stocks, bonds and mutual funds (as these assets obtain a stepped up basis for tax purposes)
- ◆ Secure rental property - confirm proper insurance, arrange for property management, pay any taxes and collect rents
- ◆ Arrange for the management of any business and decide if it should be sold

Typical Payment Duties

- ◆ Pay for or reimburse for the Funeral Bill
- ◆ Pay for or reimburse for any Court Costs
- ◆ Pay Inheritance Tax due
- ◆ Pay for Priority Administrative expenses – Accountant Fees, Appraiser Fees, Attorney Fees, Executor Commissions, etc.
- ◆ Pay any personal taxes or real estate taxes due
- ◆ Pay any final medical bills
- ◆ Pay for any other debts and liabilities

Other Miscellaneous Duties

- ◆ Obtain a Tax Identification Number for the Estate
- ◆ Open estate checking and or savings accounts
- ◆ Arrange for appraisals of real property (real estate)
- ◆ Arrange for appraisals of personal property (coin collections, jewelry, etc.)
- ◆ Arrange for appraisals of business assets
- ◆ Establish and fund any trusts set up in the will
- ◆ Contact the property insurance company to notify of death & check coverage
- ◆ Sell or dispose of any perishable items
- ◆ Continue and/or settle any claims or lawsuits

Income and Estate Taxes

(After a loved one passes away they will likely still have to file income tax returns. An estate may also have income tax returns (“fiduciary” returns) to file similar to an individual. Also, an estate may have gift tax and/or estate tax returns to file.)

- ◆ Notify the IRS and State Agencies of your authority to act (Federal Form 56 – Notice of Fiduciary Relationship)
- ◆ Prepare and file any final federal and state *Personal* Income Tax Returns (IRS Form 1040 IA1040 Form to report the income and expenses of your loved one for the period(s) before death
- ◆ Prepare and file any federal and state *Fiduciary* Income Tax Returns (just like individuals, estates may have to file returns and pay taxes based on income and expenses from the date of death until the estate has been settled
- ◆ File any gift tax returns as necessary
- ◆ File any federal and state estate or inheritance tax returns as necessary and pay tax due. This is often referred to as the “death tax”.

Distribution. After all of the assets have been collected and all of the expenses and debts have been paid, any remaining assets should be distributed to the beneficiaries.

- ◆ Prepare an accounting of the estate. The beneficiaries are entitled to a report of the assets and income collected by the estate, the debts and expenses paid, and what remains to be distributed to them.
- ◆ Obtain receipt and release agreements from the beneficiaries approving the accounting and acknowledging their share of the estate
- ◆ File the appropriate paperwork with the Court to discharge you from your duties and close the estate

Please note that this information is provided to help you and other survivors understand the estate administration process and give you some idea of what you can expect during the estate administration process. However, because every estate is different, some of the items listed above may not apply in your particular situation. Also, you may have additional requirements that are not listed above depending upon your loved one’s unique situation. All information provided was developed based on Iowa estates. If you should have any questions regarding the information presented or about the process, please do not hesitate to contact our office at (712) 737-3885.