



ESTATE ADMINISTRATION OVERVIEW: A Fiduciary's Responsibilities (Estate Executor or Administrator)

- **Probating the Will:**

- Locate an original copy of the decedent's Will – the original will have *all* signatures in *pen* ink
- HIGHLY RECOMMENDED: Confer with the decedent's, or your, attorney on all matters regarding the Estate – whether or not probate is required!
- Determine if the Will must be probated – in Minnesota, a Will **must** be probated if:
 - (1) The decedent owns real estate (regardless of value) either in his/her name alone or as a "tenant in common" with someone else; **OR**
 - (2) The decedent has no real estate, but has personal property in his/her name alone totaling \$75,000 or more; **OR**
 - (3) The decedent has a combination of real estate and any amount of personal property in his/her name alone
- IF the decedent's Will must be probated, I strongly suggested you consult a licensed attorney for assistance!**
- IF the decedent's Will must be probated, determine whether Formal or Informal Probate is appropriate:
 - Formal Probate is *required* in Minnesota when ANY of the following are True:
 - The estate is insolvent (there are not enough assets to pay outstanding estate debts).
 - There are unknown heirs.
 - The original Will cannot be found.
 - There is disagreement among the heirs or devisees.
 - If there is any reason for a judge to sign an order or decree.
 - There are minor heirs or devisees
 - There is a Medical Assistance Claim
 - Under most *other* circumstances, Informal Probate will be appropriate – confirm with Court Administration
- IF the decedent's Will must be probated, and you want to try to do it on your own, take the original Will to the District Probate Court in the county where decedent lived, or owned property, and apply for Formal or Informal Probate to receive Letters Testamentary – Court Administration should be able to provide some limited assistance
 - NOTE: the Probate Court will show patience in your attempt to do this without an attorney. HOWEVER, the Judge/Court Administration does NOT have a duty to act as a law professor and teach you how to successfully navigate this process! If you do not have at least a basic understanding of how the process works, the Court may not allow you to proceed without the assistance of an attorney.
 - THEREFORE, IF YOU ARE GOING TO TRY DOING THIS YOURSELF, I HIGHLY RECOMMEND AT LEAST READING A BOOK BY A RESPECTED PUBLISHER ON THE SUBJECT, SUCH AS NOLO – Find a link to their excellent book on this subject at <http://www.makilawfirm.com/minnesota-wills/>

- **Identify, valuing and gathering assets:**

- Get a notebook for recording all estate assets – write a brief description of all assets and note their location (if in doubt, write it down! Remember: you must be prepared to present this list if any Probate hearing is required)
- Search decedent's mail, house, and other places the decedent had access to, for valuable papers and assets

- Examine the contents of any safe deposit box(es) – have the estate’s attorney accompany you if any issue is anticipated
 - Identify and inspect all of the decedent’s real estate and real estate contracts – including any mortgages, leases, rental contracts, purchase agreements and contributions toward any jointly owned property
 - Discontinue any unneeded utilities – BUT *ensure* dwellings have heat in the winter (i.e. to avoid frozen pipes)
 - Remember: the Executor has a **duty** to preserve the decedent’s assets until the final disbursement!
 - Have all real estate appraised by a *qualified* appraiser – be sure to carefully review their report(s)
 - Identify and collect debts owed to the decedent
 - Examine all life insurance, real estate, and personal property insurance policies
 - Contact all life, real estate and personal property insurance companies to inform them of the policy holder’s passing so policy coverages can be updated (and request any life insurance company to provide an IRS Form 712 – Life Insurance Statement – related to any policy payouts)
 - **NOTE:** it is *not* the Executor’s duty to ensure all life insurance policies are paid to beneficiaries (unless the *estate* is the beneficiary) – but you *should* provide guidance to the beneficiary(ies) by providing the insurance company’s contact information so they can file for the benefits themselves
 - Investigate possibility of work-related profit sharing or pension death benefits
 - If applicable, contact the Veteran’s Administration (VA) to inquire about potential death and survivor benefits
 - Review the last three (3) years of decedent’s Income Tax returns to identify other potential assets
 - Review any estate securities held (stocks/bonds/CDs/annuities/etc) – keep close observation of the stock market and investment trends, consider liquidating to “safe” money if appropriate
 - Again, **REMEMBER:** the Executor of the decedent’s estate has a DUTY to preserve all of the decedent’s assets and ensure those assets are properly invested until the final disbursements are complete!
- ***Paying debts and liabilities of the estate:***
 - Open a checking account and/or savings account for the estate (it MUST be an interest bearing account), and transfer all cash assets into it
 - Estimate administrative/estate costs, and determine whether any assets need to be sold to raise cash to pay them
 - Identify decedent’s other remaining outstanding debts
 - Liquidate all assets not specifically named in the Will (i.e. put real estate on the market, sell household goods, etc.)
 - Use the *Estate checking/savings account* to pay all outstanding debts
 - **NOTE:** If there are not enough assets to pay all debts, [Minnesota Statute 524.3-805](#) lists debt payment priority
 - ***Preparation of income and estate tax returns:***
 - FEDERAL TAX RETURNS:
 - The Executor will need to prepare the decedent’s final federal *Income Tax* return (IRS Form 1040) if the decedent would have been required to file if still alive (i.e. the decedent was receiving pension income) – follow the usual federal Income Tax procedures and guidelines
 - There are also two (2) types of federal *Estate Tax* returns that *may* need to be filed:
 - **IRS Form 706:** *only* required if the decedent’s *gross* estate’s exceeds \$10 million (2018)
 - **NOTE:** *all* gifts given by the decedent which were reported on a federal *Gift Tax* return (IRS Form 709) during the decedent’s *lifetime*, as well as life insurance policy payout amounts are *included* in this calculation – even if payment is made directly to a beneficiary (you can contact the IRS to request transcripts of all Gift Tax returns filed in the decedent’s lifetime)

- IRS Form 1041: *only* required if the estate will generate more than \$600 in *gross* annual income
- If it is even *close* to possible that *either* of these situations may apply to the decedent's estate, *contact an accountant experienced in preparing estate tax returns* – you may want to start with the decedent's personal accountant;
 - **IMPORTANT:** improperly completed Estate Tax returns can result in an audit – which can delay final settlement of the estate by *years*, and in certain circumstances, can even expose the Executor to *personal liability*!
- Obtain income tax returns for the past 3 years – and all Gift Tax returns filed during decedent's *lifetime*
- Investigate and make a list of any and all gifts decedent may have made within 3 years prior to death
- Check for expenses and other deductible items usable in the preparation of federal income and estate tax returns
- Make sure all tax returns are filed on time!**
- MINNESOTA ESTATE TAX RETURN:
 - Minnesota requires a state Estate Tax return be filed only if:
 - The total estate value and taxable gifts made within three(3) years prior to the decedent's date of death exceeds \$2,400,000 (2018); OR
 - The estate is required to file a federal estate tax return
- **Accounting and Distribution of Assets:**
 - File the required inventory of decedent's assets with the Probate Court on a timely basis
 - Prepare an informal accounting, and distribute the assets of the estate to the person or persons named
 - File a Closing Statement with the Court.
 - If an informal accounting is NOT sufficient (e.g. someone may challenge the proposed distributions), you are likely going to need the assistance of an estate attorney

This is a *suggested* checklist and by no means intended to be all-inclusive. You should, therefore, discuss more fully with your attorney your duties and responsibilities as a fiduciary.

PLEASE NOTE: being an Executor can be hard work! If you decide to take on this important duty yourself, make sure you take your duties seriously as the Executor can be held personally liable for mistakes – meaning the Executor will have to repay the estate for their mistakes!

Commissions:

One final note: because being an Executor is hard work – and it is **work**, Minnesota statutes provide that an Executor can be paid a “reasonable” amount for performing their duties. The fee is called “Commissions” and is paid from the estate's assets to the Executor as Administrative Fees – so keep track of what you did and how long it took you to do it.

Don't be afraid to claim your Commissions! Most don't understand the amount of work involved. So, if anyone doubts that you should be paid for performing these duties, just show them this List of all the work you were *required* to do to closed your loved one's estate. Any doubt about you being paid should quickly evaporate as they will be glad they didn't have to do it all!

Best of Luck!
Scott A. Maki, Esq.

Feel free to Contact Me with any questions or concerns!

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