

## Overview of Estate Administration/Duties of the Executor

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When a Foley Hoag LLP attorney serves as counsel for the Executor, administrative tasks should be allocated between the two. Depending on how much time and expertise the Executor has to devote to these matters, counsel may actually perform many of these tasks.

### Probate Administration

We will prepare and file the petition for probate. Probate performs three functions: (a) to confirm that the will is the valid last will of the decedent (this is the “allowance” or “proving” of the will) and to appoint the nominated Executor; (b) to list the heirs-at-law who are entitled to notification of the probate proceeding; and (c) to enable transfer of the assets in the decedent’s sole name to the beneficiaries named under the will.

Shortly after the petition is filed, the Probate Court will issue a formal Notice which needs to be published in a local newspaper and must be sent to heirs at law who have not assented to the probate of the will and legatees named in the will. This Notice alerts any creditors and other interested persons that the will has been offered for probate. A copy of the Notice is also sent to the Attorney General if charitable bequests have been made under the will, if there are even remotely charitable contingent interests under the trust, or if there are no known heirs at law. If no one objects to the allowance of the will or to the appointment of the nominated Executor, we will arrange for the allowance of the will and secure the appointment of the nominated Executor. This process usually takes 6-10 weeks from the date the will has been filed with the Probate Court but varies from Court to Court, and may take longer if heirs-at-law cannot be located or live out of the country.

If it should be necessary to obtain appointment of an Executor sooner than 6-10 weeks, we may ask the Probate Court for a temporary appointment pending the permanent order. Generally, this is done if there is an immediate need to preserve and manage the assets of the estate such as running a business. The proceeding requires a personal appearance by an attorney at the Probate Court.

Once the probate assets are valued, we will prepare and file a formal inventory of the probate assets with the Probate Court.

In concluding the administration of the estate, we will prepare, file and have “allowed” a formal accounting of the estate administration with the Probate Court which officially discharges the Executor from responsibility for reported acts or transactions.

### Identification, Collection and Valuation of Assets

The Executor should compile a list of the decedent’s assets. We will arrange for valuations as of the date of death and, if an estate tax is payable, six months after date of death. We will open an estate account to receive the assets and to make payment of debts and administration expenses

and/or will make payments from the Trust account. Even when we serve as counsel, we prefer to arrange for custody and management of the estate assets during the period of administration and make appropriate arrangements for the payment of ongoing bills. The primary duty and responsibility of the Executor is to marshal the decedent's assets; not to make investment decisions. To this end the following actions will be taken during the course of administration:

- A. Close and/or transfer all the existing bank accounts, stocks, bonds and mutual funds held in the sole name of the decedent and transfer these assets into an account in the name of the estate.
- B. Arrange for the appraisal of real property, if applicable. If it is specifically devised, the property passed immediately upon allowance of the will to the devisee, subject to any liability.
- C. Arrange for the appraisal of the tangible personal property and, if necessary, make arrangements for securing and safeguarding the property, including proper storage and insurance, until those assets are either sold or distributed to the beneficiaries.
- D. Process claims for life insurance payable to the estate.
- E. Collect interest in pension plans and/or individual retirement account funds of which the estate is the designated beneficiary.

At the earliest possible time, the Executor should calculate the estimated Estate tax liability of the Estate and make arrangements to set aside safe, liquid assets (such as U.S. Treasury obligations) for payment of any taxes on the due date.

#### Information Regarding Debts, Funeral Expenses and Other Expenses

The Executor may ask family members to help compile a list of all the debts and expenses, and will arrange for payment from Estate account.

- A. Debts of the Decedent: These are all bills which were incurred before the death of the decedent but not paid by or for him/her at the time of his/her death. These include utility expenses and outstanding real estate taxes, outstanding credit card bills, medical expenses (to the extent that such medical expenses were not covered by insurance), unpaid personal income taxes, loans, etc.
- B. Funeral Expenses: These are all bills and expenses incurred in connection with the funeral, including the funeral home bill, costs of any reception after the funeral, sympathy cards, stamps for sympathy cards, long distance telephone calls, flowers, clergy stipends, gravestones and the like.
- C. Expenses of Administration of the Estate: These include all expenses relating to the administration of the estate, including legal fees, photographic reproduction charges, death certificates, certificates of court appointment, court filing fees, telephone bills, transportation expenses, and so on.

## Final Individual Income Tax Return

The Executor will need to confirm arrangements for the preparation and filing of the decedent's final individual income tax return which is due on April 15<sup>th</sup> of the year following his/her death. Often the accountant or attorney who previously prepared the tax returns will be asked to prepare these final returns.

## Estate Tax Returns

The Executor is responsible for preparing and filing the U.S. Estate Tax Return (Form 706), the Massachusetts Estate Tax Return (Form M-706) and any other state inheritance or estate tax returns. The due date for filing the estate tax returns is nine months after the decedent's date of death. Typically, we prepare the returns for the Executor and provide legal advice for reporting positions. Depending upon the size of the estate, one or both of these returns may need to be prepared and filed.

## Fiduciary Income Tax Returns

The Executor will be responsible for preparing and filing the federal and state fiduciary income tax returns which must be filed within fifteen months of the decedent's date of death and each subsequent year thereafter until the probate assets have been distributed and the estate is closed. The Executor will also be responsible for filing the estimated fiduciary income taxes for Massachusetts income tax purposes. If the estate is open longer than two (2) years, the Executor is responsible for making Federal estimated income tax payments as well. Again, we typically prepare the returns for the Executor.

## Bequests

If there are bequests under the will, the Executor will arrange to pay them from estate assets. Generally, the bequests (whether under the will or trust) are not paid until the time for creditors to bring claims against the estate has elapsed, which is one year after the date of death. Distributions from the estate and/or trust should not be made without consulting counsel.

If there are pecuniary bequests under the trust, the Executor and Trustee may wish to pay them from the trust assets within six months after the death of the creator of the trust, otherwise interest begins to accrue from the date of death.

## Distribution of the Estate

Final distribution to the beneficiaries of the residue of the Estate typically occurs after both the Internal Revenue Service and the Commonwealth of Massachusetts (or other state) have issued estate tax closing letters accepting the estate tax returns. Depending on the situation, the time frame is generally from one to three years after the estate tax returns have been filed.

## Important Deadlines

The following highlights some important dates during the estate's administration.

### A. *Non-legal Preliminary Matters*

- Obtain several certified copies of the death certificate.
- Contact Social Security to notify of death. The surviving spouse must also contact Social Security to receive any further benefits due.
- Check on sufficiency of fire, liability and casualty insurance.
- File life insurance claims and obtain Form 712s.
- Determine surviving spouse's income needs and make arrangements, as necessary, for his or her immediate financial security.
- Secure any valuable personal or real estate, particularly when no family member is nearby.

### B. *Within three months after Executor gives bond*

- Obtain taxpayer identification number for the estate (and trust).
- Determine who will be preparing decedent's final income tax returns.
- Obtain copies of gift tax returns and income tax returns.
- Open estate accounts and deposit funds from other institutions holding decedent's funds, including banks.
- Arrange for professional appraisals of real estate and tangible personal property, as necessary.
- Consider whether ancillary administration is necessary (i.e. if the decedent owned real or tangible property in his sole name outside Massachusetts).
- Change dividend mailing address if securities not jointly owned.
- Consider liquidity and cash needs and begin orderly process of changing investments.
- Value all assets.
- Prepare and file probate inventory.
- File and obtain pension payments and annuity benefits.

### C. *Six months after decedent's date of death*

- Alternate valuation date. Estate assets may be valued for Federal estate tax purposes either as of (a) the date of death or (b) six months after the date of death if the value on alternate valuation date produces a lower tax.
- Pay pecuniary bequests from a trust, otherwise interest begins to accrue from the date of death of the creator of the trust.

### D. *Nine months after decedent's date of death*

- Federal and Massachusetts estate tax returns due along with most other state inheritance or estate tax returns.

*Note: A six month extension can be requested for good cause, but the taxes must be paid.*

- If estate contains Massachusetts real estate file for Release of Lien.
- Last day to make irrevocable disclaimer.

E. *April 15th of the year following the decedent's death*

- Prepare and file the decedent's final individual income tax return, along with any tax due.

F. *Within one year after the decedent's death*

- Choose fiscal year for fiduciary income tax purposes.
- Last day for creditors to file claims against the estate.
- Pay bequests under a will, otherwise interest begins to accrue.
- Prepare and file Federal and Massachusetts fiduciary income tax returns.

G. *Final Steps*

- File Federal closing letter with Massachusetts Estate Tax Bureau.
- After receiving Massachusetts Closing Letter:
  - Make final distributions.
  - File final Federal fiduciary income tax returns.
  - File final Massachusetts fiduciary income tax returns.
  - File final account and have it allowed.
  - Petition court for license to sell real estate within one year after appointment, if necessary.
  - Notify beneficiaries of tax costs of inherited property.