

WHAT YOU NEED TO KNOW ABOUT SETTLING AN ESTATE



*A handy guide to the steps
necessary to settle an estate
in Maryland.*

Chesapeake
ESTATE SERVICES

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This publication provides general information on the administration of estates in Maryland. It is meant only as a guide to explain the various steps in the process. There are forms to be filed with the Orphan's Court at various points along the way that are not specifically detailed here. These forms, along with instructions, are available at the Office of the Register of Wills in each jurisdiction and on the State Registers of Wills web site, www.registers.state.md.us.

WHAT DOES IT MEAN TO SETTLE AN ESTATE?

When someone dies, his or her property, also known as that person's **estate**, needs to be disposed of according to the wishes outlined in a **Will**. Completing that process means **settling the estate**.

Probate Assets

The Will is the legal document that clearly explains how all of the **decedent's** (the person who died) property is to be distributed. In Maryland, this property is known as the estate's **probate assets**. The people who receive that property are called the **legatees** (people receiving the legacy of the decedent), or **beneficiaries**, of the estate. Property includes personal possessions such as jewelry, furniture, collectables, and cars; investment securities such as stocks and bonds; life insurance policies; money in bank accounts, and real property such as houses or condominium apartments. Property can also include any interest in a business. There may also be a Trust referenced in a Will that distributes money directly to its beneficiaries as ordered by the language of the Trust. The decedent may also have had an employee benefit which, upon death, goes to a specific beneficiary or the whole estate.

If there is no Will, the State of Maryland has determined how property will be distributed between a surviving spouse, children, parents, siblings, etc. If there are no heirs, the assets of the estate are paid to the Board of Education.

Non-probate Assets

There may be property that is passed automatically at the time of death to another person, such as a spouse or child. This property is considered a **non-probate asset** and is not considered part of the estate. Examples include property owned jointly by the person who died and a person whose name is also on the property, such as on a deed to real property, jointly owned IRA's or annuities, pension plans, and life estates. The proceeds of a life insurance policy taken out on the person who died are non-probate assets if payable to a named individual, not the estate itself. If payable to the estate, they become probate assets.

(When the person who has died has minor children, there should be a provision in the will to name a guardian for both the children and the property they will ultimately inherit. In these circumstances, there are other specific laws that apply.)

If the person who died has personal property or real property located outside the State of Maryland, this property must be administered as an **ancillary estate** under the laws of the state where the property is located. This property is not subject to the laws of Maryland.

The Personal Representative

The person responsible for carrying out the wishes expressed in a Will is called the **personal representative**, or **executor**, of the estate. He or she is the one who personally represents the direct wishes of the person who died, executing the instructions in the Will for the beneficiaries. The required activities involved in settling an estate are called the **administration** of the estate. Those activities include collecting the assets of the estate, paying the death taxes, paying any debts of the decedent and any expenses the estate incurs, and distributing the remaining assets as outlined in the Will. It is incumbent on the personal representative to settle the estate honestly and ethically in such a way as to maximize the value of the estate for the beneficiaries.

If the personal representative is not a Maryland resident, an **Appointment of Resident Agent** form must be filed with the Orphan's Court in order for that person to settle a Maryland estate. This form is available at the Register of Wills' office. If the non-resident does not want to serve as personal representative there is also a form to file with the Court.

If the decedent owned property in Maryland but actually lived outside of Maryland at the time of death, the personal representative named in that state can file an application with the Register of Wills to be named a

foreign personal representative in Maryland. That would be done in the Maryland jurisdiction where most of the property is located. A foreign personal representative is obligated to solicit creditors to the estate in Maryland and to make a reasonable effort to find those that might not be known.

The Orphan's Court

In Maryland, the court responsible for matters relating to estates is called the ***Orphan's Court***. There are Orphan's Courts in all 23 counties and Baltimore City. Although an attorney is not legally required to be involved when the personal representative settles an estate, it is usually recommended so any legal questions can be handled properly. In many cases, the attorney arranges for certain of the estate settlement steps to be completed.

Estate Administrations

When someone dies, the personal representative must file the Will with the ***Register of Wills***, the administrative officer of the Orphan's Court, to open the estate. The personal representative can administer the estate as a ***regular administration, modified administration, or small estate administration***.

When the estate is opened, the Orphan's Court assigns it a reference number that the personal representative will use when communicating with the Court. The personal representative is given a Letter of Administration that has been certified by the Orphan's Court and states the named person has all rights to make inquiries in the name of the decedent and the estate. Copies of these letters will be required in many places, so the personal representative should get several copies, each with the Court seal affixed to it. There is no charge for the Letter of Administration. Additional copies can be acquired from the court as needed.

A Small Estate

A ***small estate administration*** is done when the fair market value of all the probate property, less any debts of record secured by the property (***liens***), is less than \$30,000, or \$50,000 if the sole beneficiary is the spouse. This is a more streamlined method of administration but can only be used if the estate value is less than the \$30,000 or \$50,000 amount.

A Modified Estate

A ***modified estate administration*** is also a more streamlined method; however certain time limits and restrictions apply. The personal representative must elect to make a modified administration within three months of being appointed by the Orphan's Court as personal representative, and all legatees or beneficiaries must consent to the modified form of administration. In addition, in this type of estate, the only legatees are the surviving spouse or children of the decedent and the personal representative and the estate must be solvent and with sufficient assets to satisfy all of the gifts named in the Will. If at any time during the process, one of the legatees files an objection with the Court, the process ends and the administration must switch to a regular administration process. A verified final report must be filed with the Court within 10 months from the date of appointment and a final distribution of the estate must occur within 12 months from the date of that appointment.

A Regular Estate

A ***regular estate administration*** is made in all other estates. However, a regular administration can be completed regardless of the size of the probate estate.

HOW TO BEGIN THE PROCESS

What should you gather?

There is a basic list of information and documentation the personal representative needs before the probate process begins. Gathering as much as possible at the beginning will help move the process along more smoothly.

- The most recent Last Will and Testament of the decedent and any codicils to the Will.
- The Certificate of Death and the spouse's Certificate of Death if the spouse died prior to the decedent.
- Copies of any prior gift tax returns filed by the decedent.
- Copies of all bank statements for the prior year, for accounts in the decedent's name or owned jointly with another person.
- Copies of all brokerage statements for the prior year, for accounts in the decedent's name or owned jointly.
- The location and contents of any safe deposit box.
- Copies of all stock certificates or bonds titled in the decedent's name or owned jointly.
- Deeds or leases for any real property titled in the decedent's name.
- The names and addresses of the legatees (beneficiaries).
- Copies of any other legal documents, such as divorce decrees or contracts that involved the decedent.

The Will is usually found among the decedent's personal effects (in a file cabinet, desk, shoe box, etc.), in a safe deposit box, in the decedent's attorney's office, or filed with the Register of Wills.

Is there a safe deposit box?

If there is a safe deposit box, the personal representative will not be able to open the box automatically, unless that person's name is already on the box or the decedent pre-filed an authorization with the bank allowing that person access to the box. If not, the personal representative can take a Letter of Administration, Certificate of Death, safe deposit box key, and valid identification to the bank to gain access. The personal representative will not be able to open the box until he or she has been appointed by the Court and has a valid Letter of Administration.

When the safe deposit box is opened, a written inventory of the contents should be made. The inventory should show the date the box was opened and the name of the personal representative and anyone else

present, give a detailed list of each item, and list who took possession of the items. Everyone present should sign and date the inventory.

The Petition for Probate

The Register of Wills office has *Petition for Probate* forms to open the estate. In some cases the attorney will file the forms, but the personal representative can also do it. The name of the person who died must be filled out exactly as it is in the Will. The form is not difficult, but if needed, staff in the Register's office can be very helpful.

Bonding the estate

At this point, an estimate of the value of the probate estate, both personal and real property, is needed for the form. This is just an estimate so the Register of Wills can fix an amount of the personal representative's *bond*. The bond is required to cover the Register of Wills costs and inheritance taxes in case the estate can't cover those expenses. It is too early to know the value of the estate specifically, so the bond is based on the estimate. The bond requires a nominal fee that is paid by the estate. An estate bond can be arranged by an attorney or purchased directly from an insurance company.

Estate Inventory

The personal representative is required to file a complete *Inventory Report* of all probate assets within three months of being appointed. Each item should be described in detail and valued at the fair market value as of the time of death. Professional appraisers are available to help determine the value of items such as real estate, collectibles, etc. The cost of the appraisal becomes an expense of the estate. If there is any money owed to pay-off a particular item, what is owed should be described on the inventory as well. Corporate stocks can be valued by the personal representative using national or regional stock exchange values on the date of death. The inventory should also list debts owed to the decedent and/or estate, bank accounts, other investments, and cash. Clothes and shoes need not be included in the inventory but jewelry and furs should be.

An *Information Report* listing trusts, jointly held property, retirement accounts, gifts made within two years of death, and other non-probate assets should also be filed with the Register of Wills.

NOTICE REQUIREMENTS

Interested Persons

At the time the Petition for Probate is filed, there should also be a **List of Interested Persons** filed that shows the names and addresses, if known, of each of the decedent's "heirs at law." Those are the people entitled to inherit if the person died without a Will, or intestate. The list should also include the names and addresses of all beneficiaries under the Will and the personal representative. This is filed so the Register of Wills can send notices by registered mail to each of these people to tell them of the probate proceedings.

Notice to Creditors

When the estate is opened, a **Notice to Creditors** must be published in the local newspaper of record. The notice states that creditors have six months from the date of death to file their claims against the estate, or two months to file claims if notified by the personal representative. Claims should be filed both with the Register of Wills or with the personal representative. The Register of Wills has notice forms. After it is filled out, the Register fills in the date that the Letter of Administration was granted. Then the Register's office sends the notice to the local paper. It will be published three times over three weeks. After the notice appears, a Certificate of Publication is sent by the newspaper to the Register. The personal representative will receive a copy of the certificate with the bill for the publication. The cost of the notice is billed to the estate.

PAYING ESTATE BILLS – CLAIMS AGAINST THE ESTATE

The personal representative is under the obligation to seek out and take care of estate bills. However, there is no penalty for not actively looking for creditors. The onus is on the creditors to protect their debt by filing a claim.

The personal representative can pay claims against the estate if they are considered valid and can decide not to pay certain claims if they are not considered valid. There is no time limit imposed to disallow a claim but if a claim is disallowed, the creditor can seek a hearing before the Orphan's Court within 60 days of the disallowance.

Unpaid utility bills, credit cards, outstanding loans, and any other debt of the decedent can result in a claim against the estate. If the decedent lives in a rental property, the personal representative will want to get tangible personal property, such as household furnishings, valued and removed as quickly as possible so the property can be cleaned and turned back to the landlord, thus saving unnecessary rent payments. But don't rush the process or turn off utilities too early just to save money.

The decedent's mail needs to be forwarded to the personal representative, unless that person lives in the home of the person who died. If there is any concern about the mail not getting to the personal representative, the local postmaster can be very helpful.

Canceling credit cards

The personal representative should destroy any valid credit cards where the decedent is the only name on the card. If there is a joint card, the last bill needs to become part of the estate's records so it is just the decedent's portion that is attributed to the estate. Then, the card needs to be cancelled and reissued to the spouse or other cardholder.

Medicare

If the decedent was receiving medical benefits under Medicare or another health insurance plan, the bills and claims could continue to arrive for several months. The personal representative should become familiar with the decedent's medical bill file so there are no outstanding medical claims when the estate is closed.

Social Security

There is a lump sum Social Security death benefit for anyone covered by Social Security, no matter what age or whether the person was receiving benefits at the time of death. The Social Security Administration can supply the necessary forms.

If the decedent was receiving Social Security payments at the time of death, the check received at the end of the month of death must be returned. If a spouse is entitled to continued benefits, that person should file for those benefits as soon as possible.

Which bills to pay first?

If the estate is too small to pay all claims and expenses, there is an order of payment to be followed. Each category is to be paid in full before the next category is paid and no claim in any category is to be paid over any other claim in that category. That order is:

1. Fees due the Register of Wills
2. Cost and expenses of administration of the estate including the bond premium, publication of notices, appraisal fees, expenses of litigation if any, expenses of distribution, expenses of the sale of property, maintenance and management of property not specifically bequeathed to anyone, real estate taxes, and any State or Federal estate taxes due.
3. Funeral expenses up to \$5,000.
4. Compensation of the personal representative and any real estate broker's commissions on the sale of real property.
5. Family allowance of \$5,000 for a surviving spouse and \$2,500 for each unmarried child under 18.
6. Taxes due by the decedent.
7. Reasonable medical, hospital, and nursing expenses of the decedent's last illness.
8. Rent payable by the decedent for not more than three months past due.
9. Wages, salaries, or commissions for services performed for the decedent within three months prior to death.
10. Old age assistance paid by the State during the decedent's life.
11. All other claims.

No payments are to be paid to the legatees (beneficiaries) until all of the above claims are met.

Disclaiming a share of the estate

Only a surviving spouse has the right to "claim" a share of the probate estate, but any beneficiary or person entitled to property or the beneficiary under an insurance policy or life estate may "disclaim" that interest. This may be done to reduce that person's taxable estate or to arrange the property or money go to their children. In this case, the personal representative should discuss what is required with an attorney.

REQUIRED ESTATE ACCOUNTINGS

The personal representative is responsible for preparing *accountings* for the Court as outlined in the law. The estate attorney can create the accountings at the specified times if the personal representative prefers. But it is the personal representative's job to propose a plan for the distribution of property and then distribute it according to the Will. The Court prefers that assets be distributed within nine months of the initial appointment, but this is not always possible.

Notice to interested parties

At the time a filing is made with the Court, a notice of the filing is to be mailed or delivered to all interested parties. This notice must say that the account has been filed, that the interested persons may file exceptions with the Court within 20 days of the Court Order approving the accounting, and that distributions under the account approved by the Court will be made within 30 days of the Order of the Court when it is considered final. It is not necessary to give copies of the actual accounting to each person, but a copy must be made available if requested.

The personal representative must verify that the account is true and complete and certify compliance with the notification requirements. This certification should contain the names of everyone who received copy of the notice.

Any or all of the interested parties can waive their right to receive the notices by notifying the Register and personal representative in writing. This can shorten the distribution time frame.

Although the personal representative can complete the notice requirements, often attorneys take care of creating and mailing the notices.

Starting at the date of appointment of the personal representative that person shall:

- Within three months – file the Inventory and Information Reports.
- Within nine months – file the first accounting that includes an updated list of inventoried assets, a list of all activity undertaken by the personal representative for the estate, all receipts including the sale of property, a list of disbursements and distributions, and the value of all assets remaining.

When more than one accounting is needed

When it is not possible to distribute assets within the nine month period, the personal representative or the attorney can file an initial

accounting with the Court showing:

- the total value of all of the estate assets known at that point,
- minus an itemized listing, including amount and description, of all estate receipts since the last accounting.
- This equals the total gross value of the estate assets to be accounted for,
- minus an itemized listing of all payments and disbursements, showing the total amounts paid and disbursed.
- This equals the total amount available for distribution.
- The accounting then shows the distributions and proposed distributions to the beneficiaries including the amount of inheritance tax due on each distribution
- and showing the value of any assets to be retained until the next accounting.
- This equals the total value of the estate accounted for.

The law requires distribution be made within 30 days of the approval of the accounting by the Orphan's Court. This also may be delayed if the estate is waiting for acceptance of the Federal Estate Tax filing, or if there is an unusual circumstance holding up the completion of the estate. In this case, additional accountings may be required by the Court. Additional accountings must be filed every six months until the estate is closed. A personal representative can be removed by the Court if filings are not made on time.

The personal representative must verify that the accountings are true and complete. If there are any questions, the personal representative should work with the estate attorney on the accountings.

Fees

The Orphan's Court will assess certain fees when accountings are filed based on the value of the probate estate. The probate fee covers the cost of filing and recording documents, additional fees for complicated estates, for Letters of Administration if more than 12 are needed, or for two or more certified copies of the Will.

Personal representative commissions and attorney fees

The personal representative may receive a commission from the estate as payment for services and time spent settling the estate. This is often done when the estate is complicated and difficult to administer. A Petition for Personal Representative Commissions must be filed with the accounting and is subject to approval by the Orphan's Court in certain circumstances.

The estate attorney is paid by the estate. A Petition for Attorney Fees is also filed with each accounting. Maryland law specifically states how much an attorney and personal representative can charge in commissions and fees. This amount is based on the value of the estate.

The final accounting

The final accounting is filed with the Register who forwards it to the Orphan's Court for approval. The Court's approval of the final accounting automatically closes the estate.

DISTRIBUTING ESTATE ASSETS

Each person named in the Will is to receive what is stated in the Will. That designation may direct a certain piece of property be given to someone, such as a specific piece of jewelry going to a specific person, or it can be a designation that gives someone, as an example, one-half or one-quarter of the estate's assets. A distribution may be made as property rather than as cash if the beneficiary does not require it be turned into cash. In this case, the value of the property must not exceed the amount of cash that would have been distributed. Distributions representing cash, however, should be made in the form of a check to show proof of distribution.

Other specific rules govern the distribution of certain kinds of property, such as unregistered securities, automobiles, stocks and bonds, and real estate. An attorney can best advise how to handle these.

The personal representative may distribute some or all of a beneficiary's share before the administration is completed. However, the personal representative must be absolutely sure there are enough assets in the estate to cover all of the claims against the estate, taxes, etc., as listed above.

It may be wise to consider the time of the year when distributing assets of the estate. If distribution is scheduled in November or December, the beneficiary may prefer the distribution in January once a new tax year begins.

Once all of the expenses of the estate have been calculated and the personal representative knows exactly how much cash will be needed to finalize the estate, each interested person should be given a proposal for the distribution of cash and other assets. This proposal should have a summary of all of the assets and liabilities of the estate and a description of the property to be distributed with a statement of how the personal representative plans to distribute it. And, the proposal should explain that everyone involved has 30 days to object to the plan. If someone does not object, the right to object is waived. Objections must be in writing and presented within the 30 days.

Non-probate assets

Although the personal representative does not need to be involved with the transfer of non-probate assets (those that transfer automatically under a specific instrument such as an IRA, life insurance, jointly held property), the date of death value of the non-probate asset may be needed for the Federal Estate Tax return.

When the beneficiary is a minor

There are rules to be followed under the Uniform Transfer to Minors Act that explain how and to whom property may be transferred if the beneficiary is a minor. An attorney can work with the personal representative to be sure the law is followed and the minor's interest is protected.

Additional assets discovered after estate is closed

If additional assets are discovered or if other reasons arise, the estate may be reopened with the Court to settle the matters.

TAXES

The estate is responsible for any income or estate taxes owed.

Income Taxes

Income taxes, both State and Federal, must be filed for the decedent for the year of death.

Estate Taxes

A Maryland Estate Tax return must be filed if a Federal Estate Tax return is filed and if, at date of death, the decedent was a resident of Maryland or a non-resident who owned real or tangible personal property in Maryland.

Generally, a Federal Estate Tax return is required if the gross estate is more than the following filing requirement for the year of death:

| | |
|-------------|-------------|
| 2004 - 2005 | \$1,500,000 |
| 2006 - 2008 | \$2,000,000 |
| 2009 | \$3,500,000 |

The Maryland exemption is capped at \$1,000,000. Maryland Estate Tax is calculated by deducting the Inheritance Tax paid to the Register of Wills from the maximum allowable credit for State Death Taxes on the Federal Estate Tax return. If the Inheritance Tax paid is equal to or is more than the credit for State Death Taxes, no Maryland Estate Tax is due.

Property that is not subject to Inheritance Tax in Maryland:

- Property that passes to a lineal descendant, such as to a parent, child, spouse, stepchild, etc., or a corporation having the same as stockholders
- Life insurance benefits that are not payable to the estate of the insured
- Grave maintenance, if specified in a Will, for up to \$500 for perpetual upkeep of graves
- Property passing to a non-profit organization which is exempt from tax under Federal law
- Property administered under Small Estate Administrations
- Property passing to any one person of less than \$1,000
- A non-resident's personal property located outside of Maryland
- Income accrued on probate assets after the date of death of the decedent
- County, State, or municipal corporations

Property subject to Inheritance Tax in Maryland:

- Property that passes through a Will or under the law if there is no Will
- An interest as a joint owner (other than surviving spouse) in any real or personal property including bank or other financial institution accounts
- Property that is transferred, other than through a bona fide sale, within two years of the decedent's death and is meant as a final distribution to someone
- Property the decedent controlled at the time of death such as trusts, annuities, pension or benefit plans that are subject to federal taxes, and life estates.

It is best to consult the estate attorney and an accountant to determine whether Maryland or Federal taxes are due before closing an estate. Maryland Estate taxes are paid to the Comptroller of the Treasury and failure to comply with Maryland law could mean the Estate will owe interest and late charges.

*The material contained in this booklet
is not meant as legal advice.
It is always advisable to consult an attorney
when conducting business with any Court,
including the Orphan's Court when settling an estate.*

*Estate laws are subject to change
by the Maryland General Assembly.*

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