

## **Introduction to Estate Administration**

The administration of an estate involves, at its most basic level, the distribution of an individual's probate assets remaining after all final debts, taxes and expenses have been paid. If the decedent's wishes were recorded in a properly executed will, then the decedent is known as a "testator," and the executor must ensure that the provisions of the testator's will are closely followed. If the decedent did not leave a will, the state laws of intestacy would govern the distribution of the estate. In the case of intestacy, the probate court would appoint an administrator of the intestate estate, who would have responsibilities very similar to those of an executor. In either case, the probate court would oversee the administration process.

The following sections summarize the typical estate administration process for a decedent with a will, with particular emphasis on the laws of Connecticut.

### Probate Application

Within thirty days of a testator's death, the will, together with any codicils to the will, must be brought to the probate court in the testator's home district. In order to be recognized by the court as a legally enforceable document, the will must be probated, or proven as valid.

A Probate Application is filed with the will. The application requests the court to accept the will and officially appoint the executor, the individual named in the will to carry out the provisions of the will, as the fiduciary of the estate. The application includes the names and addresses of all the decedent's heirs (those individuals to whom the estate would be administered according to the laws of intestacy) and beneficiaries (those individuals and entities to whom the estate assets are bequeathed according to the provisions of the will). If there is no contention among the heirs and beneficiaries, the court may enter a decree without a formal hearing and without requiring the parties to be present. However, the court has discretion to require a hearing in any event.

The court then issues its decree admitting the will to probate. A Probate Certificate, confirming the appointment of the executor, is also issued and may be used by the executor as proof of his or her authority to act on behalf of the estate.

### Marshaling the Estate Assets

Upon being appointed by the court, the executor must immediately begin to collect the decedent's assets. This involves transferring bank and brokerage accounts from the decedent's name to an estate account and shielding all of the decedent's

other property from harm. In addition, any service providers regularly dealt with by the decedent should be informed of the death; any accounts that remain open should be transferred to a new account in the name of the estate. The executor is strictly prohibited from commingling the estate's assets with those of his or her own.

### Anticipating Cash Requirements of the Estate

While gathering the assets of the decedent, the executor should anticipate the cash requirements of the estate. These include administration expenses, taxes, claims and specific bequests. The executor may need to sell estate assets in order to meet the cash needs. Depending on the terms of the decedent's estate plan, it may be necessary to obtain court approval before selling the decedent's real estate.

### Satisfying the Claims of Creditors

After notifying any potential claimants, the executor is required to satisfy the claims of the estate's creditors. The executor must then provide written confirmation to the probate court that all debts have been paid.

### Valuation of Assets and Preparation of Inventory

The executor is required to file an inventory of all estate assets with the probate court. This inventory should include personal property, bank accounts, securities, life insurance policies and retirement policies payable to the decedent's estate, and real estate. The inventory does not include any assets held jointly with right of survivorship or property passing by beneficiary designation.

All property included in the inventory is to be valued based on the fair market value of the assets on either the decedent's date of death or the alternate valuation date (see below). A formal appraisal is necessary in most cases to value real estate holdings and other substantial interests, such as artwork and collectibles.

### Taxes

There are various tax returns due during the administration of an estate, all of which must be filed by the fiduciary of the estate.

#### *Estate Taxes*

When the value of the decedent's gross estate (plus adjusted taxable gifts) surpasses the available federal estate tax-free amount, which is currently \$2 million and increasing to \$3.5 million in 2009, a federal estate tax return will be due. The due date is nine months from the decedent's date of death. There is an automatic six-month extension for filing the return. It is generally necessary to make a payment of the projected estate tax at the time of filing the extension request.

Unlike the federal estate tax return, a Connecticut estate tax return is required of all estates, regardless of value. However, similar to the federal estate tax return, no tax will be due for estates valued at less than \$2 million. The Connecticut return is also due nine months from the decedent's date of death, with a six-month extension available. If the decedent owned property outside of Connecticut, the estate will likely be required to file an estate tax return in that state as well. An ancillary probate proceeding would also be required in order to transfer the non-Connecticut property to the beneficiaries.

Although the value of the gross estate is typically calculated according to the fair market value of the assets on the decedent's date of death, the executor may elect to value the estate at the fair market value of the property six months after the date of death ("the alternate valuation date"). The alternate valuation election is available only if both the value of the gross estate and the amount of estate tax due would decrease as a result.

Typically no estate tax is due upon the death of the first spouse to die because of the unlimited estate tax marital deduction, available for property passing to a decedent's United States citizen spouse, assuming certain other conditions are met. Again, there would still be a filing requirement.

### *Income Taxes*

Federal and Connecticut final individual income tax returns are due for the tax year in which the decedent died. In addition, the estate is required to file income tax returns for each year that the estate is in administration. These fiduciary income tax returns account for any income earned with respect to assets held in the decedent's estate and in the decedent's revocable trust.

The tax law enables the executor to make a variety of elections that may produce favorable income tax results. The first such election relates to the determination of the end of the initial tax year for the estate. Careful timing of the tax year can produce a benefit by deferring the time when taxes will be due. A second election involves the choice of whether income to the estate should be accumulated or distributed to the beneficiaries. This decision is based on an assessment of whether, given the particular facts of the matter, the income should be taxed to the estate or to the various income beneficiaries.

### Disclaimers

A qualified disclaimer is a post-mortem estate planning tool whereby a beneficiary disclaims a gift or bequest from the decedent in order to allow the disclaimed property to pass to the successor beneficiary. Often, disclaimers are utilized to make full use of the decedent's estate tax-free amount and, consequently,

to decrease the total amount of the estate tax liability in the decedent's and the decedent's spouse's estates.

### Final Accounting

In order to complete the probate administration of an estate, the executor must file a Final Account with the probate court after all debts, expenses and taxes have been paid. The accounting should include a list of all amounts received by the executor and all amounts paid or distributed from the estate.

### Distribution of Assets

After the Final Account has been approved by the court, the executor is to distribute the assets of the estate according to the provisions of the decedent's will. Such distributions may be made outright to individuals or to trusts established for the benefit of one or more individuals under the decedent's estate plan.

Often, the estate assets will be distributed to the trustee of the decedent's revocable trust. The trustee is then responsible for administering the provisions of the trust with minimal court intervention.

### Selection of Counsel

Our attorneys, accountants and paralegals are experienced in every aspect of the probate process. We are able to guide executors through the estate administration process with sensitivity to the needs of family members and other beneficiaries. We are committed to guiding fiduciaries through this process efficiently and effectively, whether we have been asked to take a very active role in administering the estate or to handle only specific aspects of the estate administration. We are well-equipped to aid the fiduciary with the preparation and filing of probate documents, attend hearings, supervise asset valuation and management, provide counsel on post-mortem tax planning, prepare and file the federal and state estate tax returns, personal income tax returns and fiduciary income tax returns, as well as assist with asset distribution. We are also experienced in handling sophisticated estates, which often require the valuation of assets such as businesses, partnerships, real estate, investments, pensions and trusts. In addition, we are qualified to represent fiduciaries before the IRS and state tax departments in connection with audits and tax examinations.

Please feel free to contact one of our attorneys directly to discuss your matter in greater detail.