

## CHECKLIST FOR AN EXECUTOR OR ADMINISTRATOR

Checklist of duties for the person(s) named as executor or administrator of a decedent's estate (the generic name for an executor or administrator is a "personal representative" or PR):

- If necessary, notify Social Security and any applicable pension plan that the decedent has died. The funeral home may handle this as part of its services, or a family member may handle this task. Depending on the date of the death, Social Security may reclaim a pro rata portion of the month's benefit. If there is a surviving spouse, he or she may need to work with Social Security on adjusting benefits in light of the death.
- If the decedent's family has not already done so, secure the residence and tangible property. If the decedent lived alone, the PR may decide to change the locks to prevent heirs — or people who think they should be heirs — from helping themselves to items. Likewise, a family friend or neighbor should stay at the home during any funeral services to help discourage theft. Notify the homeowner's insurance carrier of the death and, if the home will be empty, let them know the specific steps taken to secure and monitor the residence.
- It is part of the PR's fiduciary responsibility to preserve and protect the assets of the estate. This includes continuing homeowner's insurance, utility payments and other essential, asset-protecting expenses; securing valuables such as jewelry and firearms from theft or damage; supervising and managing the operation of any rental properties or other business interests; and working with the decedent's financial advisor (if any) to make sure that investments don't lose value.
- Request 8-10 death certificates. These are essential for any legal business of the estate. The funeral home often will request these as part of its services; otherwise, they are available from the Health Department.
- Locate and read the will. This is the only way to know for sure who is appointed to be executor, whether the executor can serve without bond and other important details. The will may be stored in a safe deposit box, a fireproof safe at home or (though not recommended) in a filing cabinet. Some people even keep their wills in the freezer or other "hidey holes." Also check for and read any related estate planning documents, such as a revocable living trust or an irrevocable trust. Often, a revocable living trust can make probate unnecessary on its own; in addition, a trust may name successor trustees (after the deceased person) who will need to work closely with the PR.

Consult the decedent's attorney, accountant and/or other professional advisors to solicit their input, and consider engaging a qualified professional to provide advice in fulfilling your duties.

Don't rush to probate. Even if the decedent left assets that do not automatically pass to another person, a full, formal probate may not be necessary. Depending on the assets and their value, it may be possible to administer the estate without a full probate. However, once you start a probate, you can't "un-start" one.

Determine what assets the decedent owned and how he or she owned them. Depending on the assets and their titling, a probate of the estate may not be necessary. Assets that were owned jointly with right of survivorship go to the co-owner (if he or she survives the decedent). Assets with a designated beneficiary — such as life insurance, retirement accounts or "Payable On Death" bank accounts or CDs — pass as directed in the beneficiary paperwork.

Finding all of the assets and how they are owned can take some detective work. Look through old tax returns, bank and brokerage statements, files, the safe deposit box and any other sources to make sure you have found all of the assets. Don't forget the decedent's computer and his or her email account; many of us handle our financial lives online, and these can be a treasure trove of information. After determining the decedent's passwords, make sure to check the browser bookmarks and history as well as any financial software.

If there are assets that will require a probate of the estate, file the appropriate paperwork with the probate court to be appointed the PR of the estate. If it will be a small-estate probate or muniment of title, a simple court order can appoint the PR; if a full probate is necessary, Letters Testamentary will be issued. These documents will authorize the PR to act on behalf of the estate to collect the assets; determine the proper debts, expenses and taxes; carry out the wishes of the person who has died and complete the estate settlement process.

Notify the heirs of the estate, either by sending them a copy of the will or (when there is no will) by sending them a copy of the Letters of Administration. This is an excellent time to let the heirs know about the probate process, particularly the facts that 1) they must usually survive the decedent for a certain period of time in order to inherit, and 2) the debts and taxes of the estate must usually be settled before any significant distributions are made.

Open a bank account for the estate and transfer funds from the decedent's account(s) into this account to cover expenses of the estate. You must have a death certificate and Letters Testamentary (or court order) in order to take care of

this. Track any expenses you pay yourself for reimbursement by the estate; also track your mileage and time spent, in the event you apply for compensation as PR.

Notify the creditors of the estate that the probate process has begun. An official notice is published in the newspaper, but the PR must also send actual notice to any known or reasonably known creditors, such as doctors, hospitals, credit card companies, etc. If a creditor files a claim which the PR believes is not correct or appropriate, it is the PR's responsibility to take exception to the claim within a short period of time to avoid having to pay for a "debt" of the deceased that may not be legitimately due.

In addition to paying the debts of the deceased, the PR must also pay any taxes owed by the deceased, and the list of possible tax obligations can be long. For example, the PR must file (and pay from the estate) any past income tax return the deceased failed to file; the final income tax return(s) for the year of death; a Tennessee inheritance tax return (if the estate is worth more than \$100,000); and in some cases a federal estate tax return. If interest, dividends or other income is earned by the estate before the settlement is complete, then a separate federal income tax return (Form 1041) must be filed in the name of the estate. And, if the decedent made large gifts during his or her lifetime, the PR may need to file state and possibly federal gift tax returns for prior years.

Collect any money owed to the decedent, whether it is an income tax refund, a pro rata refund on health insurance or nursing home expense, a personal loan to a family member, etc. If the decedent made personal loans to heirs of the estate, such as children, it may be possible to have those assets (the loans) allocated to that heir's share of the estate.

Determine that all of the assets of the estate have been located and that all of the estate's debts have been paid before making distributions to heirs. There have been cases in Tennessee in which a PR "over-distributed" before settling all of the debts and was held personally liable for part of the shortfall. When settling a legitimate claim against the estate, be sure to have the satisfied creditor sign a release that confirms payment.

Also make sure to pay all of the legitimate expenses of the estate, including accountants' fees, attorneys' fees, appraisers' fees, etc. The PR should also apply to the court for reimbursement of his or her expenses and, if the PR wishes to be paid, he or she should request compensation for serving as PR. Such compensation is based primarily on the time spent serving as PR, billed at a reasonable rate.

Once the PR knows that the debts are paid, the expenses are paid (including an estimate for the PR's time to finish settling the estate) and the assets are all found and taken care of, it is time to make distributions to the heirs. As with creditors of the estate, the PR must get a signed release from each heir receiving a distribution. If an heir wishes to disclaim his or her inheritance, such disclaimer also must be properly executed and filed with the probate court and with the PR within nine months after the date of death.

When testamentary trusts are created pursuant to the decedent's will, it is a good idea to meet with the attorney, accountant and financial advisor for the trust to determine the tax effects of funding the trusts, the income tax basis and possible capital gains or losses on funding, the potential growth in the assets of the various trusts in the future, etc., before final funding decisions are made.

Finally, after all the debts, taxes, funeral bills, attorneys' fees, accounting fees, appraisal costs and PR's fees are paid, the balance of the assets in the estate must be distributed to the heirs as directed in the Will. If there is no Will, then this balance of property is paid to the heirs of the estate as determined by Tennessee law. The PR must file a receipt and release from each estate beneficiary with the probate court before the PR can be released from the duties of the estate administration.