



Legal Insurance



## **An Overview Of *Settling an Estate***

The settling of an estate is essentially the administrative process of settling someone's financial affairs after they are deceased. Settling an estate will vary based on the state laws where the person was a resident at the time of their death. It will also vary based on where property was owned and whether there was a will. At a high level, the person who settles an estate will:

- Appoint and empower fiduciaries to represent the estate in proceedings and confirm the decedent's distribution plan.
- Solicit and pay claims, fees and taxes of the estate.
- Collect, administer and distribute estate property.
- Confirm paperwork demonstrating closure of the decedent's financial history.

The process can be simple or complicated. Some actions may not be needed based on the estate's size, make-up and complexity. The local probate court may be involved on a minimal or supervisory basis — or may not be involved at all — depending on the nature of the estate and the laws of the states where the decedent's estate property exists. Read on to learn more details about the process.

**Fiduciaries:** the various people appointed to manage and protect an estate.

**Decedent:** deceased person whose estate is being settled.

While settling an estate mainly involves resolving the financial obligations of the decedent, the process could include identifying who'll take care of dependent children or administer any trusts. These issues are best discussed with an attorney and are beyond the scope of this guidebook.

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# Responsibilities of Settling an Estate

What does it mean to be named as an estate executor? What will you be responsible for doing either on your own or with professionals? Here is a general summary of what an executor will do:

## **Pull things together and sort things out**

Settling the estate starts with finding and collecting information about any estate planning documents the decedent had. These documents appoint someone to handle the estate and someone to care for the decedent's minor or disabled dependents. Other documents will identify estate assets and where they are located. You will also need to identify the nature, extent and location of the property that will become the decedent's estate.

## **Checklist to help you get organized**

### **Notify:**

- Immediate family and close friends
- Attending physician, coroner or funeral home
- Rabbi, priest or pastor as appropriate
- Attorney and fiduciaries listed in plan documents
- Employer, Social Security, Medicare and/or others who provided income
- Local community or fraternal organizations
- Military

### **Locate the following documents:**

- Funeral and disposition wishes
- Wills, codicils and trusts
- Life insurance policies
- Bank and credit union records and investments

- Credit card statements and other bills
- Assets and property deeds
- Partnership agreements and business financial records if applicable
- Death certificate\*

### **Make final arrangements:**

- Arrange for funeral home, cemetery, burial or cremation, as appropriate
- Plan final services, viewings, wakes or memorials
- Write obituary and distribute to local papers
- Locate safe deposit box(es); follow state specific procedures
- Keep records of all payments for funeral and other expenses
- Investigate Social Security benefits
- Find out about employee benefits
- Locate any veteran's burial allowance and other benefits
- Notify fire, theft, liability, homeowner's and auto insurance carriers
- Notify life insurance, pension and any employer benefits
- Review credit cards, bank accounts, debts and other installment payments; cancel or close if appropriate
- Arrange for trust allocations
- Arrange for final income tax returns and estate tax return

\*A death certificate is typically requested from the funeral home. You'll want to request multiple copies to cover insurance policies and other notifications. To obtain a death certificate, you'll need a copy of the deceased's Social Security card, his or her parents' names, mother's maiden name, surviving spouse's name, burial location, occupation at time of death and most recent address.

## Ensure estate fiduciaries have authority to act

In most cases, the estate fiduciaries will need to obtain formal authority to act. Typically, the fiduciary will file the applications and supporting documents required by local law with the proper probate court and then receive letters or orders from the court. The formal granting of authority empowers the estate fiduciaries to demand turnover of the decedent's assets from third parties.

**Probate:** the legal process of settling an estate.

## A note on the decedent's professional relationships

Keep in mind that most relationships with financial institutions the decedent had will end upon his or her death. Anyone helping with financial affairs will likely need new formal authorization to handle the estate.

### Important to keep in mind

Remember that what's required for an estate is going to be determined by state and local statutes, rules and practices from where the decedent resided at the time of death and where the decedent's property is located. For details on your state and local estate laws, look on the local probate court's website or visit the clerk's office.

## Resolve disputes and settle claims

If family or friends challenge the decedent's will or creditors pursue debts the decedent owed them, estate fiduciaries will resolve those issues in probate court. In addition, the estate fiduciaries will decide whether to pursue claims the decedent had against others.

## Pay debts

Any unpaid bills and ongoing contracts will need to be reviewed and either paid, compromised or rejected. If someone with a rejected claim wants to persist in seeking payment, an application may be filed in the probate court and the estate fiduciaries can oppose them. Probate proceedings impose shorter time limits on claimants to file their claims or be barred (i.e., lose the ability to enforce them). These shorter time limits are intended to support the quicker settlement of decedent's estates.

## Pay taxes

All applicable tax claims must be resolved before the estate is considered "closed." Tax liabilities can include:

- State tax returns for the last year.
- Federal tax returns for the last year.
- The decedent's tax liability for enforceable taxes from any prior years.
- The estate's tax liability for income earned during the period of estate administration.
- The estate's tax liability for value of the estate that is being transferred. Only estates valued over approximately \$13.99 million per individual, or \$27.98 million for married couples, pay federal estate taxes (this number is adjusted each year for inflation). State estate taxes vary.

Some states also impose an inheritance tax on the money or other assets (the "inheritance") given to beneficiaries. However, these taxes are generally calculated and paid by the estate's fiduciaries from the inheritance.

**Beneficiaries:** person who receives money or other assets from the estate

## Determine liability for claims against the estate and taxes due from the estate

Generally, the decedent's estate is the only entity or person liable for the payment of the claims against the estate, whether claims arise before the decedent's death or during the estate's administration. The estate is also liable for the expenses of the estate – these claims and expenses come “off the top” before distributions are made to heirs and beneficiaries. However, there are certain exceptions:

- Some states create special protections for the decedent's immediate family so that certain property (e.g., a home) and/ or other amounts are paid to them before any other payments, whether of claims or distributions.
- Debts owed by the decedent are either paid by the estate or are eliminated. Debts represented by secured interests on estate property (i.e., mortgages or liens on motor vehicles) may need to be paid by whoever inherits the secured property if they want to keep that property, unless the will states otherwise.
- Some rules may assign payment priority to certain types of claims or distributions.

## Distribute inheritances

Typically distributions to beneficiaries are made after the estate's taxes, debts and all other liabilities (including liabilities to estate fiduciaries and employed professionals) are paid. In some instances, distributions include a specific parcel of real estate or item of personal property; however, if the distribution is as a share of a common fund, the fiduciary may have to sell some assets in order to have enough cash to create the fund.

## Account and close the estate

While estate fiduciaries are performing their financial duties, they will keep ongoing records of their transactions. As the property of the estate and the claims against the estate are resolved, the fiduciaries will need to bring these records together and make a final accounting of everything that was done. Generally, probate rules require the preparation and filing of such accounting with the court before the estate can be formally closed.



### *Tip!*

Even if a formal accounting is not required, estate fiduciaries will likely want to provide one to the estate's heirs and beneficiaries as evidence that everything was handled properly.

# What's in the Estate?

Settling an estate begins with identifying and collecting the decedent's property. This property makes up the body (or "corpus") of the estate and acts as the base from which all legally enforceable claims and obligations of the estate are paid. The remainder will be what is available to distribute to the decedent's beneficiaries. In this section we will focus on what goes into that estate corpus.

## Property belonging to decedent only

This includes any real estate, bank or investment accounts, contractual rights, or other personal property that was either formally titled in the decedent's name alone or legally presumed to be the decedent's alone (e.g., personal property or effects held and used by the decedent).

## Property held in trusts with the decedent as settlor or beneficiary

While trusts typically contain provisions leaving the property held in the trust to beneficiaries, the property may pass to the decedent's estate (e.g., if the decedent's initial beneficiaries have died and the estate was designated as residuary beneficiary).

If the decedent was a beneficiary of a trust set up by another person and no alternate beneficiary was designated by that trust settlor for the event of the decedent's death, the distributions that would have been made to the decedent if they were still living will pass to the decedent's estate. If the decedent was the ultimate beneficiary of all or part of the trust property then all or part (as the case may be) of that trust property would pass to the decedent's estate.

## Property shared by decedent and others

This includes any property the decedent owned with others. The decedent may appear as one of several owners on titles to property such as a deed, account agreement, annuity contract or vehicle title. In such cases, it needs to be determined if contract terms or certain laws automatically move property ownership to the co-owners, or if the decedent retains ownership even after death. If the decedent still has partial interests in property, that property needs to be valued, and the legal rights of the decedent as a partial owner can be exercised by the decedent's estate fiduciaries. The remaining partial interests will be included in the decedent's estate.

## Claims of the decedent against third parties

If the decedent had any pending claims or lawsuits against third parties, those claims will pass to the decedent's estate to pursue, recover or release. If the decedent met their death as the result of some third party's action or failure to act, there may be a cause of action (i.e., a claim that could be pursued to a lawsuit) against the responsible third parties; if so, that cause of action passes to the decedent's estate as does any resulting outcome.

## Property passing to the decedent by contract or operation of law

Examples of payments that would pass to the estate include:

- Proceeds of life insurance policies, if the decedent had life insurance and all designated beneficiaries predeceased them; or if the decedent was the beneficiary of insurance on the life of another who predeceased the decedent.
- Property insurance payments, if claims were made for covered property that was damaged prior to the decedent's death.
- Medical insurance claims incurred prior to the decedent's death.
- Annuity contracts with a death benefit if the decedent's estate is the beneficiary.
- Any business arrangements affected by the death of a business partner, such as requiring the sale and distribution of the business or a buy out of the decedent's share.

### What's not in the estate?

This property will not be part of the estate to be settled in probate, although its value is included for purposes of any estate or inheritance taxes imposed:

- Certain accounts, stocks, investment accounts or real estate that are given directly to individuals designated as beneficiaries. Practically all states have laws that permit a person to remain sole owner of the account or real estate, with the rights of the beneficiary only arising when the owner dies.
- Assets held in a "living trust" created by the decedent during their lifetime, with provisions in it for passing of the trust property to specific trust beneficiaries.



# Common Concerns when Settling an Estate

## **You think the decedent's will does not reflect the decedent's actual wishes**

If you believe the will misstates or misrepresents the decedent's actual wishes, you may be able to show grounds for not accepting the offered will into probate. Keep in mind, though, that it is not uncommon for decedents to treat people, even children, differently in their wills, sometimes even disinheriting people who would normally be expected to receive gifts.

The specific grounds and procedures used for challenging a will are set out in the state's probate statutes and court rules. Time limits on filing challenges must be strictly followed. If you are considering challenging a will, consult and hire an attorney who handles probate litigation to pursue.

## **You think the decedent's will has disappeared or has been altered**

The absence of a will is not unusual; however, a little investigating can help clarify the situation. Start by checking with any local probate court in states where people can deposit their wills. You can also check with any attorneys the decedent is known to have used. Find out if the decedent had a safe deposit box in any local banks. If a copy, but not the original, of a will is found, procedures exist in all states to ask a probate court to rule on whether a lost but valid will can be shown by accepting the copy for probate.

If an otherwise valid will was later altered by the decedent, procedures exist in all states to ask a probate court to rule on whether the alterations can be ignored; the altered sections invalidated; or the entire will invalidated. If a will has been altered by a person other than the decedent or if a will has been forged, procedures exist in all states to ask a probate court to rule on a will's legitimacy.

## **You think that some of the decedent's assets or property are missing from his or her estate**

While any changes may have reasonable justifications and represent the decedent's informed and voluntary decisions, there is the possibility that fraud, abuse of a confidential relationship, duress or incompetence may have factored in these changes. The estate's fiduciaries can bring required evidence from those who dealt with the decedent and if necessary can bring legal actions on behalf of the estate. If the family members suspect that the fault may lie with the estate fiduciary, then petitions can be filed in the probate court to deny appointment to or to remove the fiduciary so that another can pursue these claims for the estate.



# Professional Assistance in Settling an Estate

To what extent will you need (or want) to involve professionals experienced in settling estates? What roles would they play? What would their participation cost? These are questions that any estate fiduciary will have to ask and decide. Let's look at the types of professionals involved in settling an estate.

Remember that, despite what is stated below as to the common methods of billing, the actual billing method and amounts are heavily influenced by local law and local practice.

## Attorneys

Attorneys who handle estate settlement are familiar with the rules and practices of the probate courts in their area, as well as with the professionals who may play a role in the estate settlement. Attorneys also know the legal issues that can arise in an estate, including:

- Challenges to the estate documents.
- Validation of claims asserted against the estate.
- Clearing titles to estate property.
- Tax liability.
- Other governmental charges against the estate.

In some states attorneys are required for estate settlement procedures.

Fees that attorneys charge for probate are often capped by state law or court or bar rule at a percentage of the size of the estate (generally three to six percent); however, additional fees are permitted for services beyond those typical in a basic probate.

## When does an attorney charge a non-standard fee?

People sometimes question what services are covered by the "standard fee" and what services are "extra" and require an additional fee. While each state has its own particular ruling, the following services will generally bring about a non-standard fee:

- Involvement in a will contest
- A proceeding for determination of beneficiaries
- Contested claim
- Any adversarial proceeding or litigation by or against the estate
- Representation of the personal representative in audit or any proceeding for adjustment, determination, or collection of any taxes
- Tax advice on postmortem tax planning
- Review of estate tax return and preparation or review of other tax returns required to be filed by the personal representative
- Preparation of the estate's federal estate tax return

## Appraisers

Some estates will contain items of personal property or real estate that have to be valued in order to properly assess the monetary value of the estate. While some items can be valued by using commonly available appraisal guides (e.g., used car guides or property appraiser's statements of market value), other items (e.g., collections, art work, household furnishings, appliances) will call for an appraisal by persons either experienced or certified in the field. These appraisers often assemble the property and can also arrange and conduct auctions of the personal property if conversion into cash is necessary. Appraiser's fees can be hourly (particularly if property needs to be assembled for sale) or flat fee.

## Accountants

Most estates have to account for the assets received into the estate, the expenses incurred by the estate fiduciary and the payments and disbursements made by the estate fiduciary. Accountants also have to prepare and file necessary state and federal tax returns. While it is possible that the estate fiduciary or the attorney can perform these accounting functions, it's common for an accountant to perform at least some of them. Accountant's fees are generally flat fees but are affected by the complexity of the estate and the functions assumed.

## Brokers

If the estate has real estate to be sold, a real estate broker in the area would be used to ensure the property is properly maintained, advertised and priced and that potential buyers are qualified. Broker's fees are usually a percentage of the selling price, but there is room for negotiation. Typically, the broker commission is split when there is a broker for the buyer.



## Bonding agents

Court rules, court orders or the will itself may specify that the estate's fiduciary must obtain a surety bond from a bonding company. The premium for the bond will vary with the amount of property and the complexity of transactions the estate fiduciary is to handle.

## Financial advisors

If the estate contains investment assets, then retention of a financial advisor by the estate fiduciary may ensure that those assets perform satisfactorily once distributed.

**Surety bond:** contract that provides a source of payment to estate beneficiaries and creditors if the fiduciary fails to perform a duty and the beneficiary or creditor suffers resulting harm.



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