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AFTER DEATH ESTATE AND TRUST ADMINISTRATION CHECKLIST

When a loved one dies, there are often many questions about what tasks need to be completed in order to handle their final affairs. This can be a daunting process, especially during grief. We have prepared this checklist to help you keep track of basic responsibilities and provide a broad overview of the estate and trust administration process. This is not intended to provide legal advice or be comprehensive. Before you take any administrative actions, your first step should always be to consult with an experienced probate and trust administration attorney.

Funeral Arrangements

- Check to see if the decedent left funeral and burial instructions in writing (pre-need burial contract, Will, Health Care Power of Attorney, or letter of instruction), and consult with family or friends regarding any known wishes.

Death Certificates

- Request certified copies of the death certificate: 10 or more copies are typically recommended. The mortuary or funeral home will assist you.

Attorney Meeting

- Before you make any promises to family or take further action, you should meet with an experienced probate and trust administration attorney to (1) review the Will and/or Trust, if any, and determine who will inherit and how, outright versus in trust; (2) review decedent's known assets, accounts, and policies; (3) determine the process by which decedent's assets will pass (e.g., probate, trust, non-probate transfer, or a combination of methods); (4) obtain legal documents necessary to assume your new fiduciary role (Personal Representative/Trustee); and (5) learn how to best marshal assets, pay debts, account, and make distributions to the correct parties. Serving as Personal Representative/Trustee carries many fiduciary responsibilities; legal advice is critical to ensure everything is done properly and in a timely manner. It is key to remember that you are now responsible for managing the decedent's assets for the benefit of others, both creditors and those who stand to inherit.
- Are you able and willing to serve? Acting in a fiduciary role involves considerable responsibility; if you make a mistake in handling the decedent's affairs, you can be held personally liable by the decedent's heirs/devisees/beneficiaries and creditors for any damages that your mistake causes. While most estates are not difficult to administer, if the assets owned by the decedent at death are especially complex, or the heirs or other parties involved do not get along well, this can be an onerous job. Before agreeing to serve, you should carefully consider the circumstances. If you do

wish to serve, you should strongly consider retaining counsel to represent you throughout the entire process; legal fees are paid by the estate and/or trust.

Determination of Correct Post-Death Administration Process

- Probate?** Probate (court proceeding) is required in AZ if the estate's equity interest in real property exceeds \$100,000.00, or the estate's combined other assets exceed \$75,000.00. Note, estate assets are only those assets owned by the decedent individually that are not subject to transfer on death by joint ownership, beneficiary designation, or Trust. Probate is the court-supervised process of authenticating a Will or that the decedent died without a Will (known as intestate), appointing a Personal Representative (evidenced by issuance of "Letters"), determining heirs/devisees, and overseeing the estate administration. Note, persons inheriting by Will are referred to as devisees, and persons inheriting by intestate law are known as heirs. Personal Representative will need to obtain a tax identification number for the estate.
- Trust?** Decedent's Trust will designate a Successor Trustee to handle the administration of the trust estate, including distribution(s) to the named trust beneficiaries. Note, the trust only controls assets titled to the Trust or paid to the trust by operation of law. Unlike a Personal Representative under a Will, the Successor Trustee may assume responsibility without requirement of a court order. Typically, the Successor Trustee will use an Affidavit and Certification of Trust to evidence his/her authority to act, and in some instances will also need to obtain a new tax identification number for the Trust (if irrevocable). Note, persons inheriting by Trust are referred to as beneficiaries.
- Non-Probate Transfer?** Non-probate transfers occur by operation of law, such as pay-on-death, transfer-on-death, beneficiary designation, joint ownership, or rights of survivorship. In these instances, the designated payee, transferee, beneficiary or surviving joint owner collects the asset or death benefits directly.
- Small Estate Affidavit?** When there are estate assets, but probate is not required as set forth above the rightful heirs/devisees may use an Affidavit prescribed by law to collect estate assets.

Job Description: (1) Notice to Parties; (2) Marshal Assets; (3) Pay Debts; (4) Account; and (5) Make Distributions.

This process can be simple or complicated, depending largely on the nature of the decedent's assets, liabilities, and relationships of the parties involved. Estate administration can take a year or longer.

- Initial Notice.** In probate, the Personal Representative must provide notice of the probate proceeding and appointment of Personal Representative to all interested parties, including heirs, devisees, next-of-kin, and any known creditors. In addition, notice to creditors must be published in a newspaper. In trust administration, the Trustee must provide notice to the trust beneficiaries, which among other information shall include a copy of the trust or relevant portion thereof. Notice to trust creditors may also be published. Providing proper notice to creditors is crucial to limiting

the time prescribed by which creditors may assert claims against the estate or trust. These tasks must be handled quickly and accurately, as prescribed by law.

- Marshal Assets. Personal Representative/Trustee must identify, gather, and inventory (as of date of death) all estate and trust assets. The following are a list of typical recommended tasks:
 - Notify Social Security, pension providers, and decedent's employers of the death, and claim surviving spouse benefits, if any.
 - Personal Representative needs to provide his/her court issued Letters and Trustee needs to provide the Certification of Trust to all relevant financial institutions to gain access to and information about decedent's and his/her Trust's accounts and policies. Note, decedent's financial power of attorney is no longer valid and cannot be used to handle any financial matters.
 - The Personal Representative or Trustee needs to request and complete claim forms for all life insurance policies, annuities, or retirement accounts which are payable to the estate or trust. Note, you should never collect any qualified retirement account (e.g., 401k, IRA, 403b, etc.) without prior financial or tax professional advice to understand the tax implications.
 - Personal Representative and Trustee should open a properly titled bank account to begin immediate consolidation of all liquid assets (e.g., checking, savings, CDs).
 - Obtain date of death values of all assets. Liquid assets are easy to value based upon monthly or other written statements. Illiquid assets (e.g., real property, personal property, business interests) may require professional appraisal to determine fair market value.
 - Start and update a list of all assets owned by decedent or his/her Trust with their date of death values as you receive information. This is commonly known as the initial inventory and should be provided to heirs/devisees/beneficiaries within 90 days of your appointment as Personal Representative/Trustee. This information will also be used as the beginning balance of your later accounting.
 - Unnecessary services should be canceled (e.g., magazine subscriptions, gym memberships, etc.).
 - Secure vacant real property by changing locks and confirm auto and homeowner's policies remain in effect with adequate liability limits.
 - Forward mail to the Personal Representative/Trustee.
 - Begin an asset allocation plan and update as more information is obtained. It is wise for you to consult with the beneficiaries to determine how they wish to receive their share before brokerage accounts, real property, or business assets are sold or liquidated. For example, if one beneficiary wants to "keep" the house and the other wants to receive their share in cash only, depending upon the terms of the Will or Trust, you may be able to allocate different assets among

the beneficiaries so long as the overall value distributed to each beneficiary is equal to his or her respective share. Similarly, it is possible to transfer securities in a brokerage account to an heir/devisee/beneficiary in lieu of selling securities and distributing net cash proceeds. You should always seek advice of a financial planner and legal counsel regarding the prudent options, given tax considerations, market analysis, and liquidity needs of the estate. Although we suggest a certain level of communication with those who will inherit, as a fiduciary you have a duty to manage the assets as a “prudent person” for the benefit of all those who will inherit as well as the decedent’s creditors. This is not a democracy where outcome is determined by majority vote; you are responsible for administration decisions. That said, clear communication among the parties often times reduces or avoids unnecessary problems and expense in post-death administration matters.

- Avoid disputes over the toaster. You should also devise a neutral system by which persons may select items of decedent’s personal property or household goods that are not otherwise distributed by the decedent’s personal property list, if any, or other testamentary instrument. You should consider using an estate sale or other professional to value personal property and household goods, particularly jewelry, artwork, antiques or other valuables, and sell items not distributed to family or friends.
- Pay Debts. Before you start paying bills, you need a clear picture of the estate’s assets and their value. Creditors generally understand there is a period of administration; most creditors are not paid until at least the four-month creditor period established by Notice to Creditors has expired.
 - Review all claims and ask for proof of the debt if you have questions.
 - Timely dispute claims you believe are invalid.
 - Notify credit bureaus of decedent’s death to freeze credit and prevent fraud, and request a copy of the decedent’s credit report.
 - If you are allowed and wish to receive compensation for your fiduciary services, certain notices to the heirs/devisees/beneficiaries need to be provided.
 - Timely file taxes. Do not forget that you will need to file decedent’s outstanding personal income tax return for year of death (Form 1040), as well as Estate and Trust income tax returns for post-death year(s), state tax filings, an Estate Tax Return (Form 706) if the estate’s gross value, plus any significant transfers made during the decedent’s life, exceeds \$11.58 million dollars (in 2020), K-1 to any trust beneficiaries, and other ancillary tax forms. You should always work with a CPA.
 - Once you have a list of all liabilities, they are paid in the following order of priority: (1) costs and expenses of administration (e.g., legal fees); (2) reasonable funeral expenses; (3) debts and

taxes with preference under federal law; (4) medical and hospital expenses of last illness; (5) debts and taxes with preference under Arizona law; and (6) all other claims. You will need to determine the estate/trust solvency and devise a plan to pay liabilities and distribute the remaining assets.

Accounting.

At least annually and before final distribution, you must provide an accounting to heirs/devisees/beneficiaries which demonstrates a report of the assets, liabilities, receipts and disbursements, a listing of the trust assets and, if feasible, their respective market values.

Detailed detailed records of all receipts, disbursements, sale documents, and all financial records and communications with financial institutions as back up to the accounting.

Obtain written approval of the accounting(s), waiver of liability against Personal Representative/Trustee for the accounting(s), and consent to the proposed final distribution(s) from all heirs/devisees/beneficiaries.

Distributions.

After all liabilities have been satisfied and the final accounting and proposed final distributions have been approved you can move with final distributions and wind down the administration. Note, heirs/devisees/beneficiaries should always sign a receipt for distribution(s). All estate accounts will then be closed, and a closing statement will be filed with the Court. All trust accounts will then be closed.

Do you have to wait until the administration is complete before making any distribution? Not necessarily. If the Will or Trust makes nominal specific distributions (e.g., \$1,000 to grandchild A and \$1,000.00 to favorite charity B) you might be comfortable satisfying those bequests earlier. It is also possible to make interim partial distributions (recommended in equal amounts to all residue heirs/devisee/beneficiaries), depending upon the amount, timing and totality of the circumstances before final distribution occurs.

WE ARE HERE TO HELP.

CALL 480-922-1010 OR EMAIL INFO@BIVENSLAW.COM TODAY TO SCHEDULE A CONSULTATION.

This checklist does not provide legal or tax advice or constitute an attorney-client relationship; it is designed to provide only general information. It is important to work with an experienced attorney to help you properly administer an estate or trust. Copyright © 2020 Bivens and Associates, PLLC