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ADMINISTERING AN ESTATE

How is an estate administered after the Surrogate issues the Letters of Testamentary?

It is important to emphasize that the duties of an administrator of an estate are basically the same as the duties of an executor of an estate. Both are often called the personal representative.

The personal representative basically runs the estate and makes sure that the terms of the will are followed. Basically, the personal representative runs the estate until it is fully settled. The personal representative has the same powers over the title to property as the owner would have had. The personal representative is also considered to be a fiduciary, and he holds a special trust relationship with the heirs of the estate.

What are the important steps that the personal representative must take?

- **Notify Social Security.** You should notify Social Security of the decedent's death. You should not keep cashing the Social Security benefits of the deceased person. It is a federal crime to continue to collect Social Security benefits on a deceased person.
- **Notify the Veterans Administration.** If the decedent was a veteran, then you should notify the Veteran's Administration. The estate may be entitled to benefits.
- **Open an Estate Account.** This is a very important step. You will not be able to open up a bank account for the estate unless you obtain a tax id number from the IRS. You will need to complete an SS-4 form in order to obtain a tax id number for the estate. The government wants to collect every nickel of tax that is why they insist on even an estate to obtain a tax id number.
- **Open Up the Safe Deposit Box.** If the decedent-owned valuables such as a gold watch, a diamond ring, or stock certificates, then these items should be safely preserved. The cost of a safety deposit box is small and it is considered to be an expense of the administration.
- **Obtain the Tax Returns.** The personal representative should also obtain copies of the decedent's tax returns for the past three years. The New Jersey Transfer Inheritance Tax Branch, and the IRS may require this information.

What are claims against the estate?

If the decedent owed money before he died, then he may have claims against his estate. Basically, any credit cards, medical bills, loans, child support arrears, can be a claim against the decedent's estate. The creditors must present their claim to the personal representative in writing within nine months from the date of death. The personal representative is legally required to pay the claims of the estate, or try to settle the claims for a reasonable amount.

What if the estate does not have sufficient assets to pay off the claims?

In this day and age, with the high costs of hospitalization and nursing homes, there are many estates that have insufficient assets. In this type of scenario, the personal representative has the option of requesting that the Surrogate Court declare that the estate is insolvent. If this request is granted, then the personal representative will be required to pay the claims in the following manner:

- Reasonable funeral expenses
- The costs and expenses of the administration
- Debts and taxes
- Reasonable medical and hospital expenses
- Judgments
- All other claims

My beloved deceased husband incurred a tremendous amount of medical expenses before he died. Is his estate required to pay for these outrageous medical expenses?

Yes, your husband's estate will be responsible for the payment of his hospital and medical expenses. The personal representative has the responsibility to collect all of the hospital and medical bills, and to submit them to the decedent's insurance company for payment. If there are any balances due that are not covered by insurance, then the estate is legally responsible for paying them before there are any distributions to the heirs. An experienced lawyer should be able to reach a decent settlement with the hospital or any other medical providers. In my experience most medical related bills can be settled for 50% of the outstanding claim. You should never pay the full medical bill when settling an estate. Medical bills can be negotiated with. Most medical providers pad their bills because they fully anticipate that the patients will try to bargain the amount of the bill down.

As the executor of my husband's estate, am I also responsible for paying for his funeral expenses?

Yes, paying for the decedent's funeral expenses is a major responsibility as an executor. In small estates the payment of the funeral is always a major issue. The funeral director often insists that one of the family members also sign a contract to promise to pay for the funeral expenses. In so doing so, the funeral home can have some type of additional guarantees that their bill will be paid. Moreover, a funeral home can also file a claim for funeral services against the estate.

What is the New Jersey Transfer Inheritance Tax?

This is a tax on the transfer or the passing of your property to another person by reason of your death. The person who receives the property must pay the tax.

How is the New Jersey Transfer Inheritance Tax calculated?

It is determined by the following:

- The gross value of your estate is calculated.
- From the gross value of your estate certain deductions are subtracted.

- The net value of each beneficiary's share is then ascertained.
- The tax is calculated and then paid.

The Transfer Inheritance Tax is due within eight months of the date of your death. If the tax is not paid at that time, then interest on the unpaid balance accumulated at the rate at ten percent per year until the tax is paid.

Who is responsible for filing the Transfer Inheritance Tax Return?

The New Jersey Transfer Inheritance Tax Return is required to be filed within eight months after the date of the decedent's death. The executor or the administrator is responsible for filing this return. If this return is not filed, then tax liens could attach to the decedent's real property. Thus, much of the decedent's estate assets and real estate can't be transferred unless the Inheritance Tax Branch is paid the tax or receives evidence that no tax is due, or is given the proper request for a tax waiver. A tax waiver is a formal consent form from the Branch to release the tax lien.

What items is includable in the gross value of the estate?

The following lists are the major assets that are included in the gross value of a typical estate:

- **Real Property.** Any homes or land that you may own is part of your gross estate.
- **Tangible Personal Property.** Any of you cars, boats, furniture is considered to be part of your estate.
- **Intangible Personal Property.** Any of your stocks, bonds, mortgages, part ownership of a small business, claim to collect debts are considered part of your gross estate.
- **Property Transferred Within Three of your Death for Inadequate Consideration.** If the decedent makes transfers within three years for little or no consideration, then these transfers can still be considered to be part of your gross estate for New Jersey Inheritance tax purposes.

For example, if you are on your death bed, and if you sign a withdrawal slip from the bank account in your name, and if it is transferred to your daughter before you die. It is perfectly legal to do this. However, the value of this bank account transfer is also includable in your estate for inheritance tax purposes.

What items are not includable in the gross value of your estate?

- **Real Property held by you and your spouse.** If you own a home by yourself and your spouse in a joint ownership with the right of survivorship then the home is not includable in your gross estate. Most married couples own their home as a tenancy by the entirety.
- **Life Insurance Proceeds.** If the decedent had a life insurance policy that is payable to a named beneficiary then these proceeds are not included in the value of the gross estate.

- **Charitable Bequests.** If the decedent makes a gift to a public, charitable or religious or education institution then the value of the gift is not part of the gross estate.
- **Pensions.** Most government and private pensions and retirement proceeds are not considered to be part of the decedent's gross estate.

What expenses can be deducted from the gross value of an estate?

- Debts
- Any funeral expenses
- Any medical expenses
- Attorney fees related to the administration of the estate
- Any property taxes for the decedent's home
- Any transfer taxes for any property that the decedent may have owned in other states besides New Jersey

What are the New Jersey Inheritance tax rates?

The New Jersey Inheritance Tax structure is based on classes. Class A beneficiaries consist of your spouse, parent(s), grandparent(s), child(ren). For all class A beneficiaries there is no tax.

Class C beneficiaries consist of your brother, sister, son-in-law or daughter-in-law. There is no tax on any amounts transferred for a class C beneficiary up to the amount of \$25,000. The rates for class C beneficiaries are;

- **Amount of Transfer Tax**
 - Up to \$1,200,000 11%
 - Over up to \$1,400,000 13%
 - Over \$1,700,000 16%

To everyone else these people are classified as Class D beneficiaries.

- **Amount of Transfer Tax**
 - Up to \$700,000 15%
 - Over \$700,000 16%

What is the federal estate tax?

This is a federal tax on the value of your estate at the time of your death. This tax is determined as follows:

- The gross value of your estate is calculated
- Certain deductions are subtracted
- The tentative tax is calculated
- Certain credits are subtracted
- The Federal Estate tax is the resulting balance

The executor must pay the federal estate tax within 9 months after the death of the decedent. The good news is that most estates do not have to pay a federal estate tax. The

current federal estate tax exemption is \$3,500,000. Thus, your estate has to exceed \$3,500,000 before any federal estate taxes will be due.

What assets are includable in the gross value of your estate to determine any federal estate tax?

Basically, any homes or land that you own at the time of your death is part of your gross estate. Your bank accounts, CD's, mutual funds, and stocks are also part of your estate. The face value of your life insurance policy is part of your estate. Finally, intangible personal property such as boats and cars are also part of your estate for federal tax purposes.

My husband just died and we owned a very beautiful home. I owned the home with my husband by tenancy by the entirety. Is the value of the home included in the value of my deceased husband's estate to assess any federal estate tax?

No, under federal law both the husband and wife are treated as owning joint property one-half each. Therefore, if you and your husband own a house as joint tenants by the entirety with the rights of survivorship when you die, then one half of the value of the house and not the entire value of the house will be included in your husband's gross estate.

What expenses can be deducted from the gross value of your estate for federal estate tax purposes?

- Your debts
- Your funeral expenses
- Any medical and hospitalization expenses
- Legal fees to administer the estate
- Any costs incurred to administer the estate
- Any charitable gifts to any charitable or public institutions

What is the federal estate tax exemption?

Most estates do not have to pay any federal estate taxes. If you leave all of your assets to your spouse, then there is no federal estate tax due. This is because of the unlimited marital deduction. Moreover, there is no federal estate due in 2009 if your estate does not exceed \$3,500,000.

What is the New Jersey Estate Tax?

The New Jersey Estate tax is a separate and distinct tax from the New Jersey Transfer Inheritance Tax. Even if your estate does not owe any Federal Estate Tax, you may still owe New Jersey Estate tax. The New Jersey Estate tax is calculated on your estate on any assets that exceed \$675,000. Thus, if your estate exceeds the amount of \$675,000 then you will owe a New Jersey Estate tax.

What items are considered valid expenses of the administration?

- Funeral expenses
- Attorney fees

- Appraisal fees
- Accounting fees
- Executor commissions
- Debts, including any funeral and medical expenses

What are claims of the estate?

The claims of the estate can be a significant asset of the estate. Basically, a claim is a legal right of the decedent to collect money or to pursue a personal injury claim.

If the decedent is owed money then the executor may pursue a collection lawsuit. The right to collect these outstanding monies is considered to be a claim of the estate.

If the decedent died in a work place injury, then the executor may be able to pursue a worker's compensation case to collect monies. The legal right to collect workers' compensation benefits is considered to be a claim of the estate.

Finally, if the decedent died in a car accident, then the executor may be able to pursue a lawsuit to collect damages. The legal right to pursue a personal injury claim on the behalf of the decedent is considered to be a claim of the estate.

How are bank accounts handled in the administration process?

First, the executor should obtain a tax id number for the estate. You won't be able to open up a bank account for the estate unless you obtain a tax id number. You have to file a SS-4 form with the IRS to obtain a tax id number. If you want to withdraw monies from a bank account that was owned by the decedent then you will have to obtain a tax waiver from the New Jersey Division of Taxation. This form is referred to as a L-8. Once the New Jersey Division of Taxation signs off on this form, then you can withdraw monies from the decedent's bank account.

How are life insurance issues handled in the administration process?

In most estates, the proceeds of the life insurance are payable to an individual beneficiary. Thus, in the majority of the cases life insurance proceeds are not considered to be an asset of the estate. The executor should send a death certificate and a certified letter to the insurance company to make any claims.

How are automobiles handled during the administration process?

The transfer of title of a vehicle can be effectuated at your local MVS branch. The beneficiary who is entitled to receive the vehicle should go to the MVS and obtain title of the car. In order to transfer title, the MVS will require you to provide proof of any letters of testamentary or administration papers. Upon showing these documents to the MVS, they will then transfer title to you. No tax waiver is required to transfer title of a vehicle from the estate to a beneficiary.

How is real estate administered during the probate process?

The administration of real estate is often the most thorniest issues in any probate process. The executor should first and foremost make sure that the real estate taxes are paid for

during the administration. The late fees on property taxes can be as high as 18%. Therefore, it is extremely important for the executor to pay for the property taxes.

In many wills, the testator simply provides that his estate shall be distributed according to percentage shares. This type of distribution plan can be problematic because you can't split up a family home in shares. In this type of scenario the executor should contact the heirs and determine if any type of buy out should be explored. If so, the executor should obtain at least two appraisals of the home or real property and determine what is the fair market value of these properties are. Be forewarned that probate litigation often revolves around homes, and buyout issues. In my experience probate litigation can be even more contentious and emotionally and financially draining as a divorce is. If at all possible, the heirs should try to reach a reasonable settlement as to the ultimate distribution of any home or real property in the probate process.

If real property is owned between husband and wives, with rights of survivorship (as joint tenants), then upon the decedent's death, the surviving spouse automatically becomes the owner. Therefore, the family home does not have to go through the probate process. Nonetheless, the surviving spouse should still have a new deed drafted that transfers the home solely into his or her name. This transfer will make it easier for the surviving spouse to pay their property taxes, or to obtain additional mortgage financing on the home if necessary.

How are pension plans and retirement plans handled during the administration process?

In the majority of administrations, the value of any pension plans and retirement accounts do not pass through probate. Usually in any pension plan or retirement account, there is a named beneficiary. The beneficiary will receive the pension or retirement account upon the decedent's death. However, there will be massive taxes to pay before the beneficiary can collect his or her inheritance. It is important to emphasize that retirement accounts often consist of deferred income. Thus, the taxes on this deferred income will have to be paid before the beneficiary can receive his or her inheritance.

How are stocks and bonds handled during the administration process?

The executor is responsible for gathering up all of the decedent's stocks and mutual funds. The executor can either liquidate the stocks and place the proceeds in the estate account. Alternatively, the executor can transfer the stock or the mutual funds to the respective heirs. In most cases, the executor or the beneficiaries will have to provide the brokerage house, or the mutual fund company the surrogate papers. Moreover, the executor and the beneficiaries will also have to execute some forms to effectuate any transfers of shares or mutual funds to any heirs. These forms will have to be notarized as well.

How is the decedent's tangible personal property handled during the administration?

The executor has the responsibility to administer the decedent's personal property. Many family wars have started over fighting over mom's jewelry once she died. It really is not worth ruining your family relationships by fighting over personal property. The executor

should gather all of the decedent's jewelry, heirlooms, gold watches, and other valuables, and keep them in a safe place. The executor also has the duty to locate any valuables, take good care of them, and to distribute them in a fair manner according to the terms of the will. If there is too much disagreement over the distribution of any valuables, then the executor should simply sell any valuables and deposit the proceeds in the estate account.

How is estate property handled if it is located outside of New Jersey?

In many estates, the decedent may own homes or real estate in numerous states. Unfortunately, if the decedent owns real estate in multiple states, then the executor will have to apply for probate in every state wherein the real estate is located. Most states have an expedited process to probate a single piece of real estate in their state. This process is called Ancillary Administration. Basically, the executor will have to provide an exemplified copy of New Jersey's Surrogate papers to the Surrogate's Office in the ancillary state. Moreover, a filing fee will have to be paid as well. Thereafter, the ancillary state will issue surrogate papers for the estate.

Does the executor also have to file tax returns for the decedent as well?

The executor also has to file the personal income tax for the decedent for the year that he or she died. Moreover, if the estate earned substantial income as interest from bank deposits, dividends on stocks, or capital gains from the sale of stocks or any other assets, the executor may have to file a federal and New Jersey state fiduciary income tax return for each fiscal year during the life of the estate. In most cases a qualified accountant will provide this service.

What is an accounting?

An accounting is the executor's formal statement as to what happened in your estate. There are two types of accountings, a formal one and an informal one. Most estates are settled without the need for an accounting. It costs big bucks to prepare an accounting. If an accounting is required, then an accountant is retained by the estate to prepare same.

An accounting specifies every asset of the estate. Moreover, it specifies what happened to all of the property, whether it was retained or sold. If it was sold, for how much, and whether it earned any income. Moreover, the accounting also specifies what debts and taxes were paid and what claims were collected. Finally, the accounting also specifies what fees were paid to any attorneys, accountants, and to the executor.

Is an accounting always required in every estate?

No, an accounting is not always required. It costs big bucks to prepare an accounting. Only if there is strong evidence that the estate plan was not carried out, or if there were some type of impropriety committed, should an accounting be prepared.

How is an informal accounting rendered?

If an accounting is still required, then the best course of action is to use an informal one. Here, the executor sends his informal accounting to all of the beneficiaries for their approval. An informal accounting could consist of a simple excel spreadsheet of all of the assets and expenses of the estate. The cost to prepare an informal accounting should not be substantial.

Meanwhile, if a formal accounting is required, then a CPA or a qualified accountant must be retained. In a formal accounting, the executor goes to the Surrogate Court to have the formal accounting approved. Here, all of the beneficiaries are notified. They have the right to go to court and to object to any portion of the accounting. If there is no problem with the formal accounting, then the court approves it as well as the commissions, counsel fees and other expenses.

What are the commissions of the executor or administrator?

The executor or the administrator has the legal right to collect a commission. In many cases, the personal representative will waive his right to collect any commissions to keep family harmony.

The personal representative is entitled to commissions on any income of the estate. The commission is 6%. The personal representative is also entitled to commissions on any corpus of the estate. Corpus is a fancy word that means what assets are part of the estate. On all corpus or principal of the estate, the commissions are;

- 5% of the first \$200,00
- 3.5% on the excess of \$200,000 up to \$1,000,000
- 2% on the excess over \$1,000,000

The Surrogate Court may reduce any commissions if the beneficiary can show that the services rendered were deficient or that the trouble and the risk were substantially less than generally required for similar estates.

What is the legal standard as to how an estate should be managed?

The executor has a legal duty to manage the estate in such a way that its value is preserved and not squandered. Basically, the executor should not make risky investments. The basic goal of any executor is to maintain the status quo of the estate and to "blow" the assets of the estate. The executor should invest any assets in low risk investments.

What is New Jersey's Prudent Investment Act?

New Jersey's Prudent Investment Act sets forth certain standards of reasonable care, skill and caution for any executor. Basically, any executor should only make reasonable investments of any of the decedent's assets. If an executor blows the assets of the estate in risky investments, then he could very well be sued for violating New Jersey's Prudent Investment Act?

The executor for my father's estate is doing a terrible job. Can I make an application to the Surrogate Court to discharge him?

Yes, at any time after the appointment of a personal representative, he or she may be discharged by the Surrogate Court for sufficient cause. The grounds for discharge include:

- The executor fails to account to the beneficiaries and to the court as to the assets and liabilities and the status of any other matter of the estate.
- The executor fails to post any required bonds.

- The executor deliberately refuses or neglects to obey any court order of the estate.
- There is reasonable proof that the executor committed embezzlement or waste of the estate assets.
- The executor misapplied part or all of the estate.
- The executor refused to carry out the terms of the estate plan.
- The executor is of unsound mind or lacks mental capacity.

If any beneficiary believes that the executor should be discharged, then a complaint is filed, and the executor is given notice of the complaint. This process is called filing an Order to Show Cause to Remove the Executor. Thereafter, a court date is scheduled. If an executor is removed, then he or she forfeits any rights to receive any commissions. Moreover, any executor who is removed for cause can also be sued on an individual basis.

When are the assets of the estate distributed?

After all of the debts of the estate are paid, and all of the taxes have been paid, then it is time to distribute the assets of the estate. The executor will advise each beneficiary what his or her share of the estate will be. Before any distribution is made, the executor must run a child support search on each heir. If any child support is owed by a beneficiary, then the executor must first pay off any child support claim, and then give the balance of any share to the beneficiary.

Each beneficiary must also sign a form called a release and refunding bond. This is a legal document which recites the amount of the share. Moreover, this form also releases the executor of any liability. Finally, this form also states that if all or any part of the share is needed to pay any further debts or claims of the estate, and if the executor does not have the money to pay those debts or claims, then the beneficiary will return enough money from the share to the executor so that the debts and claims can be paid.

How long does an average administration take?

If you die without a will, then the average time frame for an administration is usually six months to one year. There are several events that can delay an administration. These factors are:

- Difficulty locating a beneficiary
- Litigation of such issues such as the validity or the interpretation of a will
- There is litigation over the discharge of an executor
- There may be litigation filed by some creditors of the estate.
- The executor is a "slacker" and he procrastinates in his duties to administer the estate in a timely manner