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Settling an Estate





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What is settling an estate?

Definition of estate

When people die, they usually leave behind money and other things of value (assets). In addition, they may have auto loans, mortgages, and other outstanding debts (liabilities). Together, the assets and liabilities left by a decedent are known as the estate. Settling an estate means that someone follows the legal and administrative procedures set up to pay the liabilities of the estate and distribute the remaining assets to the rightful beneficiaries.

Who settles an estate?

An estate is settled by the executor named in the decedent's will. Typically, the executor is the spouse or a close family member of the decedent, but may be another party. If the decedent left no valid will or the named executor fails to serve, the probate court will name an administrator to fulfill those duties. If you have been named executor in a will or appointed as the administrator of an estate, you are responsible for carrying out the terms of the will (if there is one) and settling the estate, either alone or with the help of an attorney.

Is settling an estate complicated?

Settling an estate may be tedious and time-consuming, but not necessarily complicated. It depends on the value of the estate, the state in which the decedent lived, and whether you must go through probate. Probate is the court-supervised process of proving the authenticity of the will and executing its terms. Formal probate may not be required if the decedent's property is worth less than a certain amount, or if all the assets are nonprobate assets. If minimal probate proceedings are required and there is no challenge to the will, settling an estate can be a relatively simple matter.

Do you need an attorney to help you?

If you are the executor, you aren't required to hire an attorney to help settle the estate, but you might consider it if the estate is complex or if you don't have the time, energy, or expertise to handle it yourself. If you hire an attorney, remember that he or she works for you, not for the estate, and that you are still the fiduciary. Be sure that you trust him or her to do a good job, and that you understand how the fees will be paid. In general, attorneys charge either by the hour or a lump sum, and the estate pays their fee. However, some states allow attorneys to take a percentage of the estate, an arrangement that can be quite expensive.

If you feel that you can settle the estate without much help, you should consider hiring an attorney as an advisor only. He or she will look over documents you prepare, give you specific advice in certain areas, and charge you an hourly rate for those limited services.

How to do it

Hire an attorney or other advisors

You may want to hire an attorney to help settle the estate, but other professionals such as accountants or financial advisors can also help with specialized issues. Such issues may include paying income and estate taxes, accounting for estate debts and expenses, and collecting insurance and pension benefits.

Locate and read the will

Finding the will should be relatively easy. You may already know where it is located. Otherwise, you may be able to look in the decedent's safe-deposit box, a file cabinet, or with the decedent's attorney or other family members. When you have found the will, read it to make sure who the executor is, as well as who the beneficiaries are. In addition, try to determine if the will you've found is the most recent version since more than one version may exist.

Tip: *If your spouse left no will or if the will is invalid, he or she is said to have died intestate. The probate court will establish who the legal heirs are under your state's intestate succession laws and may appoint you as administrator.*





Caution: If the decedent has a safe-deposit box, his or her bank may seal it at the time of death and may deny entry, even if you are the decedent's spouse. However, an exception might be made if you are a joint or cosigner for the box and have a key. To open the safe-deposit box, you may have to get court authorization. For this reason, either don't store your will in a safe-deposit box or have another copy stored someplace else, for example with your attorney.

Carry out funeral arrangements

Complete the funeral arrangements. Most states have a five-day waiting period before you can begin any other work to settle the estate anyway.

Gather paperwork and documents you will need

To settle the estate, you will need to have the original or certified copies of some or all of the following documents: the decedent's will, birth certificate, marriage certificate, death certificate, Social Security number or card, military discharge papers, and divorce papers. You will also need to make a list of assets (such as bank accounts, trusts, securities, real estate, insurance policies, retirement plans, business interests, and personal property) owned by the decedent at death, and find any paperwork that accompanies these assets (such as deeds, mortgages, titles, registrations, and loan paperwork).

Determine if probate will be necessary

To determine if probate is necessary, check with your attorney or your state's probate court clerk (for the phone number, look in the government listing section of your telephone directory). One of these sources should be able to tell you how your state determines if probate is necessary or guide you to the necessary resources. Many states have simplified probate procedures or do not require formal probate of property worth less than a certain amount. In general, however, probate may be necessary if there are probate assets. A probate asset is property that does not automatically pass to a beneficiary and is distributed by the terms of the will. Nonprobate property automatically passes to a beneficiary, either because the property is held jointly or because the beneficiary has been specifically designated as beneficiary in another document (a life insurance policy or pension plan, for instance).

Example(s): When Hal died, he left his entire estate to his wife, Jane. His estate consisted of a house worth \$150,000, a bank account worth \$12,935.46, and a \$50,000 life insurance policy. The house was held in the name of Hal and Jane as joint tenants with rights of survivorship. The bank account was held jointly by Hal and Jane. Jane was the named beneficiary of Hal's life insurance policy. None of his estate was subject to probate because all of Hal's property legally passed to Jane automatically.

Caution: Some bank accounts held jointly may not pass automatically to the other joint account holder. It depends on the wording of the account and the intent of the owners at the time the account was opened.

Apply for probate

If the estate is subject to probate, you must initiate proceedings by filing a petition to probate the will or administer the estate before the probate court. You can get this petition from the clerk of the court. You will then file the petition and the will with the court, along with a list of probate assets.

Notify all interested parties that probate has been initiated

You must locate and notify all interested parties (e.g., heirs at law and beneficiaries named in the will) that probate has been initiated. Even if you are the spouse of the decedent and sole beneficiary, many states require that you notify anyone who would benefit if there had been no will because they may have reason to challenge the will or they may have a more recent copy of the will. Since the length and type of notice you must give varies from state to state, check your state's laws to determine what notification procedure you must follow.

Open a bank account in the name of the estate

You may need to open an estate checking account to pay any bills or accept money owed while the estate is being settled. You may also need to obtain court permission to do this. As executor, you can deposit checks made out to the decedent to this account, as long as you endorse them. If you have questions regarding this, talk to the bank or your attorney.

Apply for a Taxpayer Identification Number (TIN) and any state ID number required





Each TIN applicant must (1) apply using the revised Form W-7, Application for IRS Individual Taxpayer Identification Number, and (2) attach a federal income tax return to the Form W-7. Applicants who meet an exception to the requirement to file a tax return (see the instructions for Form W-7) must provide documentation to support the exception.

Send your Form W-7 and proof of identity documents to Internal Revenue Service, Austin Service Center, ITIN Operation, P.O. Box 149342, Austin, TX 78714-9342. You may also apply using the services of an IRS-authorized Acceptance Agent or visit an IRS Taxpayer Assistance Center in lieu of mailing your information to the IRS in Austin.

Arrange notification of creditors

Depending on the laws of your state, you may need to publish a legal notice (usually in the local paper) to notify creditors (and other interested parties who may have received the notice personally) of the decedent's death. In addition, you may be required to mail a notice to each known creditor individually. Depending on your state's laws, creditors may have as much as one year to file a claim against the estate.

Notify institutions and agencies

Send notices of the decedent's death to the post office, banks, utility companies, the Social Security Administration, and other institutions that should be informed.

Collect debts owed to the estate and pay creditors

The executor or administrator will have to both collect money owed to the decedent or the decedent's estate and pay any bills or debts of the estate. Money owed to the estate might include unpaid salary, insurance benefits, employee benefits, government benefits, or pensions. Bills or debts of the estate might include credit card bills, funeral expenses, medical bills, advisors' fees, and loan payments. If you are the spouse of the decedent, you may need help from your advisor to determine what debt is yours alone, what is joint debt, and what is your spouse's debt.

Caution: *If you are the spouse of the decedent, don't pay any bill unless you are certain it is legitimate. When the death notice appears in the newspaper, you may be targeted by con artists who will ask you to pay phony expenses. Before paying any creditor, ask to see a copy of the original invoice and check it thoroughly. Be particularly wary of any request made by telephone. Never give out any personal or financial information over the phone (including your Social Security number or credit card numbers).*

File any insurance claims on the decedent's life

File any insurance claims on the decedent's life.

Periodically check in with the court

You may occasionally need to obtain the probate court's permission to spend estate funds. You may also be required to file reports with the court regarding how estate funds are spent. Also, you may need the court's permission to sell estate property.

File tax returns

You may have to file state and federal tax returns, including Form 1040 (U.S. Individual Income Tax Return), Form 1041 (Fiduciary Income Tax Return), and, if the gross estate is large enough, Form 706 (U.S. Estate Tax Return). In addition, your state may impose state death taxes (e.g., an inheritance tax).

Make estimated tax payments

You may need to make estimated tax payments for the estate for any tax year ending two or more years after the decedent's death.

File papers to finalize the estate

You may need to file a final account with the court that details all estate income, expenses, and administration costs. The court approves this final accounting. This finalization may take place a year or more after probate is initiated because of the length of the probate process.





Distribute assets to the beneficiaries

Nonprobate assets pass automatically to the beneficiaries, but probate assets can only be distributed after all claims, debts, and taxes are paid, and the probate process is complete. When distributing the assets to the beneficiaries, you must follow instructions given in the will as well as those required by the probate court. Once the estate is distributed, the court closes the estate and discharges you as executor.

Caution: *If you are the spouse of the decedent, be aware that until the court has officially awarded the property to you, you are forbidden to sell or gift your spouse's property, even if you feel that you are now the rightful owner. You can't even give the property to your children until the estate settlement process is complete because there may be challenges to the will or an inventory might need to be taken.*

Questions & Answers

If one spouse dies without a will, how does the surviving spouse settle his or her estate?

You can settle an estate without a will, but the laws of your state will determine how your spouse's property is distributed. These laws are called statutes of descent and distribution. You may be appointed as administrator of the estate, but it's possible for the courts to appoint someone else, which will give you less control over estate management. For advice and information, consult an attorney.

If you are named as executor, can you decline to serve?

No one can be forced to serve as executor. You can simply decline the responsibility. An alternate executor named in the will may take over or the court will appoint someone.

Does a relative named as executor get paid?

An executor is entitled to a fee equal to an amount determined by state law or whatever the probate court determines is a reasonable amount. Typically, relatives of the decedent usually decline payment for their services, even though they are not obligated to do so.

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