

## **A Step-by-Step Guide for Executors**

*Presented by Christa Canavan*

This guide intends to help you in your role as executor (sometimes called Personal Representative) of an estate. It explains the process and offers advice for getting organized and putting a plan in place to settle the estate as effectively and efficiently as possible.

### **Accepting an Executor Appointment**

The role of executor may involve a lot of time and administrative work. Know that you are not legally obligated to accept the job. If you cannot fulfill this responsibility, the court will contact an alternate executor, if named by the decedent, or appoint one.

### **Locating the Will**

The first step in the process is locating the decedent's will. Most likely, his or her family or attorney has the original. Once you find it, make a copy and store the original in a safe place until it can be filed with the probate court. Generally, a will is valid if it is in writing and has been signed and dated by the person who created it and by witnesses.

### **Reading the Will**

Prior to meeting with an attorney, review the will and look for language that identifies:

- How taxes and administration expenses will be paid
- Whether assets from a trust will "pour" into and become part of the estate
- The beneficiaries
- Specific bequests
- How to handle digital assets

### **Getting Started with Probate**

**What is probate?** Probate is a court-supervised process of administering and distributing the property of a decedent according to the decedent's will or, if the decedent died without a will, according to the state's laws of intestacy. To begin, you must petition the probate court to open the estate, file the will with the court, and seek appointment papers that will show you are the legally appointed executor who is authorized to administer the estate. It is important to retain an estate attorney and a tax professional to help you navigate state inheritance laws, probate court rules, and federal and state tax codes.

**How long does the probate process take?** That depends largely on state law, the size of the estate, and potential actions brought by heirs. A more complex estate may take years while a simple estate may be settled in months.

**What assets are subject to probate?** Assets subject to probate ("probate assets") need to be differentiated from nonprobate assets. Generally, probate assets are assets held in the decedent's own name alone with no beneficiary designation attached. Probate assets cannot be owned legally by anyone else until they have passed through the probate process.

By contrast, Nonprobate assets pass directly to beneficiaries. Assets with designated beneficiaries (e.g., life insurance, retirement plans) and transfer-on-death (TOD) designations, as well as jointly held assets, bypass the probate process.

### **Applying for an Identification Number**

The estate is a separate legal entity for federal and state tax purposes and requires its own tax identification number (i.e., employer identification number or EIN). You should apply for this number at [www.irs.gov](http://www.irs.gov) as soon as possible because you'll need it to open an estate bank account. You must also include the EIN on other documents and returns filed for the estate.

### **Ordering Copies of the Death Certificate and Executor Appointment**

You will need certified copies of the death certificate and your executor appointment for all financial transactions, including closing accounts, claiming life insurance and retirement benefits, and stopping social security payments and household bills. Many financial institutions and government agencies won't accept photocopies, so having extra certified copies on hand may help prevent delays.

### **Completing an Inventory of Tangible and Financial Assets**

Begin by making a list of known assets. In addition, to help uncover any unknown assets, look for ownership documents, such as deeds, titles, account statements, maintenance records, and receipts. Home offices, home safes, and bank safety deposit boxes are good places to look. Also keep an eye on the decedent's mail, which could lead you to discover hidden assets or outstanding debts.

### **Completing an Inventory of Digital Assets**

Digital assets may be harder to find—they may be stored on a computer hard drive or a cloud service rather than in a filing cabinet, safe, or safety deposit box—but as the executor, you must be sure they go through the administration process.

First, check the decedent's will to see whether it specifies who can access his or her digital assets, such as content in Facebook and Twitter accounts, and whether it has any instructions for what to do with those accounts. Second, if the will does not include digital assets, find out whether the decedent used the access-authorization tool on each platform (the custodian of the digital assets) to designate who could handle the accounts upon death. For example, Facebook has a "legacy contact" tool, and Google has an "inactive account manager" feature.

A properly drafted will and the custodian's access-authorization tool should fulfill the same function: identify whether the executor can access the digital assets. Alternatively, you may discover these items gave another individual access to content.

If the decedent did not express instructions for the digital assets, the custodian's terms-of-service agreement will dictate whether these assets can be accessed at all. Generally, these "boilerplate" agreements deny access to digital assets under these circumstances.

### **Staying Organized**

A good organizational plan will help you stay on top of deadlines, properly account for all assets, and avoid delays in administration of the estate. Set up a filing and record system to keep track of the deceased's assets, estate bills, court filings, and your notes. In addition, retain copies of all estate correspondence, including what you send out and what is sent to you.

### **Managing and Protecting Estate Assets**

As the executor, you have a fiduciary responsibility to the estate beneficiaries to protect and properly invest estate assets. This starts with being prudent, loyal, and impartial. Until the estate is fully distributed to the beneficiaries, you should open an estate account to receive estate assets and pay estate bills. Real property should be maintained until the asset is transferred to the beneficiaries or sold. Investment property requires special attention because it may carry fiduciary liability if the assets are not prudently managed. Digital assets will have to be curated or deleted.

Consider engaging a professional advisor to assist with the interim investment of estate assets. Additionally, don't commingle any personal assets (whether yours or that of a beneficiary) with estate assets.

### **Paying Debts and Administrative Expenses**

Before the probate estate is opened, burial and funeral costs will likely be incurred. The individual who pays these expenses will be reimbursed from the estate, or the estate will be billed for the costs. Other costs may arise—for instance, the custodians of digital assets may charge the estate an administrative fee for their disclosure.

In addition, estate assets are subject to any outstanding personal creditor claims, taxes, and administrative expenses. If there aren't enough assets to pay all creditor claims, state law and court procedure will prioritize how claims will be paid, and some creditors may remain unpaid.

If you are the executor of an insolvent estate or an estate from which assets must be sold to pay debts and expenses, it is prudent to seek legal guidance. An attorney can help you determine which assets would be best to sell from a financial and tax perspective. In addition, if a beneficiary's inheritance will be diminished as a result of the sale, it is vital to ensure that the correct asset is sold.

### **Filing Tax Returns and a Final Account**

A final income tax return must be filed for the decedent, and income and estate tax returns may have to be filed on behalf of the estate. Work with a tax advisor to ensure that these filings are complete and made on time.

Once you have collected all assets and paid all debts, expenses, and taxes, you typically must file a final account and provide it to all interested parties to provide their review, consent, or objection. After the court has approved the final account, you may distribute the assets to the beneficiaries in accordance with the will or state law. After distribution, you may be required to file final discharge papers with the court so that it can formally close the estate and discharge you from your duties as executor.

### **Seeking Help**

This summary is intended as a general guideline; many federal and state issues exist that cannot be addressed here. Be sure to seek the help of a qualified attorney and tax advisor to work through the process and to protect estate beneficiaries and yourself in the fiduciary role.

*This material has been provided for general informational purposes only and does not constitute either tax or legal advice. Although we go to great lengths to make sure our information is accurate and useful, we recommend you consult a tax preparer, professional tax advisor, or lawyer.*



**Christa Canavan, ChFC, Registered Investment Advisor**

Norton Financial Consultants

165 Main Street, Suite 206-A | Medway, MA 02053

508.429.7000 | 508.429.7409 fax | [www.nortonfinancial.com](http://www.nortonfinancial.com) | [christa@nortonfinancial.com](mailto:christa@nortonfinancial.com)

Securities and advisory services offered through Commonwealth Financial Network®, Member FINRA/SIPC, a Registered Investment Adviser. Wealth management, financial planning and tax services offered through Norton Financial Consultants, a Registered Investment Advisor, are separate and unrelated to Commonwealth. Fixed insurance products and services are separate from and not offered through Commonwealth.