

PLANNING TO ADMINISTER A DECEDENT'S ESTATE

Oakland County Probate Court

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A series of brochures presented to you by the Oakland County Probate Court

You have just been appointed as the Personal Representative of a decedent's estate. What do you do now? Major duties and responsibilities are outlined here. However, you may have other responsibilities and duties. Because the Oakland County Probate Court staff **may not** give legal advice, you should consult an attorney, accountant, investment manager and/or other qualified persons before you begin.

GENERAL DUTIES

Loyalty

You now have "fiduciary" duties. This means you must act in the best interest of the estate by putting the estate interests ahead of your own. You will be entrusted with property that belongs to someone else. You **cannot** use estate assets for personal benefit. You must perform your duties solely for the best interests of the estate's interested persons.

ASSISTANCE OF PROFESSIONALS

Probate laws demand strict compliance and are tightly drawn to protect the interests of creditors, taxing authorities, and interested persons. Since you are responsible for administering the estate, you may desire professional assistance from an attorney, accountant or investment counselor.

Engaging an Attorney

You may find it desirable to employ an attorney to assist with administration. The attorney may suggest employing other professionals. The fees for these services should be discussed and agreed upon. Also, the duties of each estate administration member (personal representative, attorney, accountant, etc.) should be expressly defined.

Requesting Compensation

At the completion of the administration, you may be paid a reasonable fee for performing your duties to the estate. These fees and those of the other estate administration members (attorneys, accountants, etc.) may need court approval. If reasonable, fees may be paid from estate funds and be deducted in determining tax liability.

TYPES OF PROBATE ADMINISTRATION

There are two types of decedent's estate administration – Supervised and Unsupervised. In both types, the Personal Representative administers the estate from funeral arrangements at the beginning, through distribution of assets, to estate closing at the end. Usually, the petitioner selects either supervised or unsupervised administration. Sometimes the facts dictate a supervised estate.

Supervised Administration requires the Probate Court to review and approve the activities of the estate.

Unsupervised Administration does not require the Probate Court's review or approval. But an interested person or the Personal Representative may request supervision at any point on a particular issue, or for the duration of the administration.

Opening the Estate

There are two ways to begin administration of a decedent's estate – Formally or Informally.

Formal Proceedings begin by filing a *Petition for Probate and/or Appointment of Personal Representative (Testate/Intestate)* and other related papers. Interested persons must either consent to the petition or be notified of the hearing. After the Probate Judge enters an *Order of Formal Proceedings*, the heirs are determined, the will (if any) is admitted, and a Personal Representative is appointed. After an *Acceptance of Appointment* and any required bond is filed, the Personal Representative becomes qualified to act until the estate is ready to be closed.

Informal Proceedings begin without a court hearing by filing an *Application for Informal Probate and/or Appointment of Personal Representative (Testate/Intestate)* and other related papers. Prior notice to interested persons is only required for those interested persons with equal or higher priority. If the Application is granted the *Probate Register's Statement* will admit the will (if any) and appoint the Personal Representative. After an *Acceptance of Appointment* and any required bond is filed, the Personal Representative becomes qualified to act until the estate is ready to be closed.

Closing the Estate

In general, an estate may be closed as follows (See the Oakland County Probate Court Information Sheets “Closing a Decedent’s Estate” for more detailed information):

❖ **Supervised Administration**

- File and serve on interested persons *Petition and Order for Complete Estate Settlement, Testacy Previously Adjudicated* --if the estate was opened formally.
- File and serve on interested persons *Petition and Order for Adjudication of Testacy and Complete Estate Settlement* – if the estate was opened informally.

❖ **Unsupervised Administration**

- Either prepare *Sworn Statement to Close Unsupervised Administration*, serve it on interested persons and file it with the Court; or
- Prepare one of the *Petitions for Complete Estate Settlement* (depending on the situation).

GENERAL RESPONSIBILITIES

Take Immediate Action after Death

- ❖ Determine if there is a will.
- ❖ Determine who the heirs and/or will devisees are.
- ❖ Make funeral arrangements if the will so directs, or encourage the nearest of kin to do so.
- ❖ Read the will and distribute copies to devisees and discuss its meaning. If there is no will, explain estate distribution under the laws of intestacy to the entitled heirs.

Obtain Authority As Personal Representative and Start Duties

- ❖ File a Formal Petition or an Informal Application to begin estate administration.
- ❖ Request opening and inventory of the decedent’s safe deposit boxes, according to law.
- ❖ Gather information including the heirs’ names, the estate assets and value, and information for tax preparation.
- ❖ Set up an accurate system to record all estate transactions.
- ❖ Arrange for the decedent’s mail to be forwarded to you.
- ❖ Prepare to collect dividends, interest, and other income from businesses and other property owned by the decedent.
- ❖ Determine insurance, social security, pensions, veterans, or other benefits payable to the estate or its beneficiaries.
- ❖ Give notice in the manner provided by law to creditors of the estate for filing of claims.

Bring Together Estate Assets

- ❖ Seek ancillary administration in other states where the decedent owned assets, if necessary.
- ❖ Obtain possession of all known assets of decedent on behalf of the estate.
- ❖ Confer with business associates and others who may know of the decedent’s other property holdings.
- ❖ Examine decedent’s records and old tax returns for income patterns which may indicate assets.

- ❖ Obtain the valuation of the estate assets with readily ascertainable value.
- ❖ Employ appraisers, if necessary, to ascertain the value of real estate, antiques, art, collections, or other assets without definite value.
- ❖ Examine real estate leases and mortgages and determine what effect they have on asset valuation.
- ❖ Prepare, with extreme care, the estate inventory reflecting the value of property as of the date of death.

Administer the Estate

- ❖ Approve or object to the validity of claims filed by creditors of the estate, obtaining court determination when necessary.
- ❖ Rank authenticated claims according to their statutory priority in case of inadequate estate assets.
- ❖ Provide for priorities and allowances for spouse and family and notify spouse of elective rights, if applicable.
- ❖ Provide for the payment of the deceased's installments debts where failure to do so will lose valuable estate assets by foreclosure or repossession.
- ❖ Operate any business of the decedent if it will benefit the estate and is authorized by the will or the court.
- ❖ Maintain prudent investment practices and carefully record all investment transactions.
- ❖ Plan to meet ultimate obligations of taxes, claims, and distributions.
- ❖ Follow legal requirements when any sale of assets is necessary.
- ❖ Obtain clearances from both state and federal taxing authorities.
- ❖ Maintain insurance on all property.
- ❖ Prepare annual accountings.
- ❖ Make distributions to devisees and/or heirs in accordance with the will or intestacy provisions, obtaining court approval when necessary.

Personal Responsibility

You will be held responsible for how you manage the estate property. You may employ an attorney, accountant, investment manager, and/or other qualified persons, but you still remain ultimately responsible.

Investment of Funds

You are expected to carefully manage the estate assets. Basically, you must not be wasteful. You must preserve estate assets by getting the maximum return with minimal risk. Investments are dictated by the will, trust document, state law or court order. Typical investments are insured savings accounts, certificates of deposit, money market accounts, stocks, bonds, mortgages (as creditor rather than debtor), notes, and securities. You should promptly and properly invest the estate's assets.

Communication

You should keep the "interested persons" of the estate informed of all relevant events throughout the estate administration, and you must serve them with copies of all documents required by court rule or statute.

Removing a Personal Representative

If you refuse or fail to perform any of your duties, an interested person or the court may begin proceedings to order you to perform those duties or to remove you as personal representative. Additionally, you may be required to repay the estate for any losses caused by your mistakes or by failing to act quickly or wisely.

TAX RESPONSIBILITIES

You are responsible for preparing and filing tax returns for the decedent and the estate. You are also responsible for paying any taxes due from estate funds. If improper or excessive distributions are made, leaving estate funds insufficient to meet tax obligations, you may be ordered to pay the deficiency from your own funds.

You must timely file these tax returns (if applicable) for the decedent and for the estate: federal, state and city income, state intangibles, and single business. You should prepare for possible audit of the decedent's previously filed returns.

When necessary, you should timely file a Michigan Estate Tax and a Michigan and/or Federal Estate return. Assets that are not subject to probate, such as joint property, most insurance proceeds, some trusts, and other forms of transfers, may still be subject to Michigan or federal estate taxes. Valuation dates, availability of estate tax credits, and optional deductions deserve careful note.

A PERSONAL REPRESENTATIVE HAS IMPORTANT DUTIES AND RESPONSIBILITIES. IF YOU FEEL UNABLE TO ACCEPT THIS RESPONSIBILITY, YOU SHOULD DECLINE TO SERVE. IF YOU ACCEPT, HOWEVER, YOU WILL RENDER AN INVALUABLE SERVICE TO THE FAMILY AND DEVISEES OF THE DECEASED.

OAKLAND COUNTY PROBATE COURT

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www.oakgov.com/probate