

BOND

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Settling the Estate of a Loved One

“What do I do next?”

“How am I going to take care of everything that needs taking care of?”

“Who’s going to help me do what needs to be done?”

These are questions you might ask a funeral director when someone close to you dies, and when your immediate task is to bring loved ones together to say goodbye. Whatever the circumstances, your funeral director will work tirelessly to make the process as painless for the survivors as possible, and to put together a fitting memorial to the person who passed.

But what about after the funeral?

One of the most important tasks that needs to be done upon a person’s passing is settling their estate. And when that time comes you might find yourself asking the same questions: What do I do next? How am I going to do everything that needs to be done? And who’s going to help me do it?

When settling an estate, the person authorized by the court to do so—whether that person be called an executor or an administrator—must navigate a complex web of state and federal laws, make vital technical decisions, and try to maintain good relations among all the parties involved. A skilled, experienced attorney with an empathetic manner and an efficient, economical process can make a huge difference between whether the estate settlement process is painful or relatively painless, expensive or affordable.

What is probate and estate administration?

Simply put, probate involves the handling of an estate when someone passes away with a will. Estate administration is similar to probate, except it applies when a person dies without a will. The probate and estate administration processes are handled through a county’s Surrogate’s Court, and are designed to ensure that creditors are paid and that probate assets are distributed to the beneficiaries named in the will or, in the absence of a will, to the descendants of the deceased individual as governed by state intestacy law.

How does the process work?

Probate begins with a petition to open the estate and name a personal representative (such as an executor when there is a will or an administrator when there is not), who is responsible for the disposition of the deceased person's property. The court requires a great deal of specific and detailed information in order for the petition to be granted. Sometimes compiling the required information is quick and simple. Sometimes it takes weeks or longer.

Once the petition is granted and a personal representative is named, the deceased person's assets are marshaled, debts are paid, and whatever is left over is distributed according to the will or state intestacy laws. Then the estate is closed.

Although that all might sound easy enough, in actuality settling an estate is a complex, time-consuming process. It takes at least 8 months, usually more, to complete the process, during which time the heirs cannot receive their inheritance. And when there are complications, such as questions about or difficulty proving the family tree, or if someone wishes to challenge the validity of the will, the process becomes even lengthier.

Even in straightforward situations there are still numerous steps that must be taken, rules that must be followed, requirements that must be met, and deadlines that must be strictly adhered to. A personal representative who fails to do something correctly, and which results in any harm coming to estate assets, may be held personally liable for any damage to the estate. That is why while an attorney is not technically required to help settle an estate, practically speaking only a probate attorney can help ensure everything is done correctly and on time by advising the personal representative throughout the entire process.

What does a personal representative do?

Once empowered by the court to act, the personal representative must:

- notify all the people named as beneficiaries in the will, as well as all family members who have legal standing to inherit, whether they are named in the will or not
- locate and protect the deceased person's property
- prepare an inventory of all estate assets
- follow the provisions of the will or State intestacy law
- file estate tax and final income tax returns
- pay all estate debts from estate assets
- comply with all state and federal requirements
- distribute the property to the heirs after all proper procedures have been followed
- prepare a final accounting.

How can I get help doing all this?

Acting as a personal representative to the estate of a loved one is not only complicated, but often mentally draining as well. That is why personal representatives are empowered to hire an attorney of their choosing—whether or not the attorney prepared the will, in cases where there is a will—to help them settle the estate. A personal representative can also hire other professionals as needed, such as accountants and real estate brokers. Estate assets are used to cover all such expenses.

I have experience with estates of all sizes and levels of complexity, and my continual investment in efficiency helps to ensure the smoothest and most economical process possible. The process is also designed to meet each personal representative's needs. For example, I can play an active role—essentially performing some or even many of a personal representative's tasks—or a more passive role, handling only strictly legal tasks myself, and then advising the personal representative of what other tasks need to be done and by when.

If you have been designated as a personal representative, or need help in getting an estate administrator appointed by the Surrogate's Court, I am here to shepherd you through the process.

Additionally, if you have any questions or concerns about the probate or estate administration process, you are invited to contact me anytime, no obligation or charge, to discuss whatever you wish to discuss. I can be reached at:

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