



PROBATE & ADMINISTRATION - FIDUCIARY CHECKLIST

If you have been entrusted by the decedent to be the executor or administrator of a New York estate, you must carry out the lawful wishes set in the decedent's Will (probate) or to follow the laws of intestacy (administration). Consider your position as a job and if you are entitled to statutory or other commissions, take them. As a fiduciary, your responsibility is to wrap up the decedent's estate responsibly and to avoid personal liability while doing so.

Below is a handy checklist for probate or administration proceedings as you work on an estate. Although I have arranged these tasks in rough chronological order, these proceedings are fluid in nature and you might need to work on more than one task at a time or revisit a task.

- **First determine if court action is required to settle an estate.** For example, if the decedent died with very few belongings and institutions where the decedent owned assets would accept a death certificate in lieu of Letters Testamentary or Administration, then you might be able to proceed with a voluntary (small) administration. For a voluntary administration, the estate must be \$50,000 or less and with no underlying litigation pending for the decedent. Further, there is exempt property for a surviving spouse that includes cash in the amount of \$25,000.00. Based on the above factors, you might not need to commence a probate or administration proceeding at all.
- **Pay the decedent's funeral bill and any final outstanding expenses.** A family member should pay for such expenses in advance (if the decedent did not previously arrange for payment of these expenses) and the surviving spouse must pay for them, which will always be reimbursed and prioritized. Reasonable funeral expenses and burial expenses are payable from the estate. Obtain a copy of the paid funeral bill and at least three (3) certified copies of the death certificate from the funeral director.
- **Determine the county where the decedent was domiciled at the date of death.** You will work with the Surrogate's Court of that county. Prepare the probate or administration proceeding along with all required affidavits and other materials and submit them to the Court with a request to be formally appointed to serve as the fiduciary. If the original Will is not available in the decedent's belongings, then check with the decedent's attorney, in the decedent's safe deposit box (if owned by the decedent) or with the Court. If the court requires the Executor or Administrator to post a bond to be appointed fiduciary, then do so. Remember that until you are appointed as a fiduciary of the estate (mere nomination by the Executor in a Will) you have no authority until the Court appoints you as Executor or Administrator.
- **Identify all assets, in whole or in part, owned by the decedent at the date of death.** Start the process of locating the decedent's assets so that you can take custody of them and protect them throughout the probate process. Look for the following items that will facilitate your job: *birth or*



adoption certificate, marriage certificate, divorce decree or separation agreement, prenuptial agreement, any trusts created by the decedent or for which the decedent was acting as trustee, safe deposit box and keys, bank passbooks, financial statements, income tax returns, gift tax returns, military service records, social security numbers, diplomas or educational records, medical and or health records, cemetery site deed instructions, passport, citizenship papers. Gather and safeguard items that will be important to inventory for the estate. You must also file a formal inventory of everything that the decedent owned at the time of death within nine (9) months of being appointed as fiduciary.

- **Appraise all property owned by the decedent anywhere in the world, even if it is a fractional share so that you can determine the total value of the estate.** This will be vital if you are required to calculate tax liability. Bank accounts, stock portfolios, and similar assets will be easy to appraise, but you might need a professional appraiser to assist you with assets like art collections, homes, vehicles, and other property. Also, check with the New York State Comptroller – Office of Unclaimed Funds to ensure that no other accounts or income from the decedent are currently being held by the state.
- Open and maintain an estate account which you will control as fiduciary of the estate. To open an estate account, you must first obtain a tax identification number for the estate from the IRS which you can do online once you are appointed as fiduciary. Deposit all the decedent's probate assets into this account which will be used to pay any costs associated with the estate settlement as well as debts, taxes, and other expenses incurred during the probate or administration process.
- **Determine what are the non-probate assets owned by the decedent.** Non-probate assets pass to a joint owner and the fiduciary has no control over them. *Examples of non-probate assets include real property with right of survivorship, life insurance policies (which revert to the estate if the policy is transferred to another person within three (3) years of death), pay-on death accounts, and institutional designation forms that appoint beneficiaries.* If there is property with a right of survivorship, it must be included in the inventory of assets that is filed with the Surrogate's Court. Fiduciaries may notify beneficiaries as to their ownership of non-probate assets, but it is not the fiduciary's responsibility to assist the beneficiary to transfer the non-probate assets into his or her own name.
- **Identify and notify any creditors who may have claims to estate assets.** Use common sense to determine what bills or debts the decedent had while reviewing records. Do not forget items such as utilities. You might need to publish a notice so that unknown creditors have an opportunity to stake their claims. It is then up to you to determine which claims are valid and you may accept, reject, or negotiate claims. If there are very few assets in the estate, many creditors will extinguish the debt owed based on evidence of a death certificate for the decedent. Once you know which creditors are owed money and a minimum of seven (7) months have passed, you must pay all estate debts and creditor obligations *in that order*. This means that all administration expenses involved in the estate will be paid first, followed by lawful debts of creditors. Classify all expenses



such as medical expenses incurred prior to death to funeral costs, attorney fees, appraisal and accounting costs, and court fees appropriately. If the decedent was receiving Social Security death benefits or survivor benefits, veterans' burial benefits, or employee, union, or worker's compensation benefits, then contact the respective governmental office and notify them of the decedent's passing and to receive the benefits on behalf of the decedent.

- **Gather all tangible personal property of the decedent (his/her/their personal items).** If the decedent left certain items to a beneficiary in his Will then distribute them to the beneficiary "in kind" which means that you are giving the beneficiary the actual item rather than its cash equivalent. For the rest of the tangible property, use an estate sale, if appropriate and place the net proceeds of the estate sale into the estate account.
- **Appraise all real estate and high value property if such items are to be sold on behalf of the decedent.** If the decedent owned real estate (personal residence, commercial building, vacation home) then an appraisal will be required prior to the sale to determine the fair market value of the item. However, if the real property is sold within six (6) months of date of death, the sale price to a third party may be used as the price of the property. Use specialized valuation rules for certain special use properties such as farmland and in the case of out-of-state property, you must complete an ancillary estate proceeding in that state to transfer or sell the real property.
- **Preserve and maintain the testator's assets while the proceeding is pending, which includes all probate assets.** The fiduciary must marshal and secure the assets and take appropriate precautions to avoid burglary or vandalism. If there are motor vehicles, they should be kept in running condition. Those who are not authorized to drive the decedent's vehicle should not be permitted to do so. The decedent's home should be minimally maintained so that there are no freezing pipes or broken windows. Valuables such as jewelry that were not jointly owned should be kept in a safe place. Digital assets such as hotel frequent flyer miles should be redeemed and safeguarded.
- **Pay premiums on certain assets if required.** Depending on the nature and extent of assets, the fiduciary might need to pay premiums on property and motor vehicles, pay mortgage and ongoing debt obligations, pay or cancel utilities, file claims for Medicare, private medical insurance or casualty insurance, cancel credit cards and secure final balances and refunds, if any, cancel cable and related unnecessary utility contracts, cancel club memberships and magazine subscriptions and secure refunds, and cancel any standing orders to buy or sell stocks or commodities with brokerage houses.
- **If applicable, determine the value of the decedent's publicly traded stocks, bonds, and mutual funds on his/her date of death in accordance with IRS regulations.** Review any buy-sell agreements or operating agreements for businesses that the decedent might have been involved with at the date of death.



- **If the decedent had a general power of appointment over assets, then the value of those assets is includible in the testator's taxable estate.** Seek professional assistance in identifying other types of less commonly held assets, such as royalties on patents or trademarks, judgments in lawsuits, and reversionary or remainder interests or pending causes of action.
- **Appraise the value of business interests.** If the decedent owned a business interest in a proprietorship, partnership, LLC, or corporation, get an appraisal of the business to establish a tax basis for this asset.
- **If the decedent had life insurance, notify the beneficiary immediately.** Life insurance policy proceeds are often an important source of cash for survivors and are never included as part of an estate.
- **Maintain an ongoing record of your activities and financial transactions, documenting all income and expenditures that flow through the estate.** Never commingle your personal assets with estate assets: doing so is a severe breach of your fiduciary duty, even if you are the sole beneficiary of the estate. A properly maintained estate account will justify the actions you took during any settlement process.
- **Satisfy all tax obligations that have been triggered by the death of the decedent.** To be sure, as a fiduciary, you are not required to personally pay the decedent's taxes but you must file and pay taxes from the decedent's estate account. After the decedent's death, there are three potential taxpayers in the decedent's estate: a) the decedent's estate which might have to pay federal and state income tax (**IRS Form 1041**); b) the last income tax return of the decedent and estate tax (**IRS Form 1040**); and c) estate tax that might be due on large estates (**IRS Form 706**). Beneficiaries might have to pay income tax on the distribution from the estate. If you are not skilled in the preparation of these tax returns, as fiduciary you may engage a tax professional to assist you. Prepare the decedent's final income tax returns. Final income tax returns must be filed by April 15 of the year after the year of death of the decedent, although extensions to file are available. A Fiduciary Income Tax Return (Form 1041) and New York State return will be due if the decedent's estate accrued income of \$600.00 or more during the year of the decedent's date of death. It is important to remember that estate taxes, if any, need to be paid within the first nine (9) months after the decedent has passed away, but you may request an extension to file. An Estate Tax Return (Form 706) will only be necessary to consider if the estate is around \$6,000,000.
- **Determine the order in which to pay debts and administration expenses of the estate.** The priority order in New York State is: 1) funeral expenses; 2) costs of administering the estate (including fees and commissions); 3) taxes and other priority payments; 4) wage claims; and 5) all other legitimate and unsecured debts.
- **Look to the Will for instructions regarding the order in which the bequests should be reduced if there are insufficient funds to pay all debts in full or to make all distributions**



required under the Will. If so, then the Executor must reduce the bequests under the Will so as to make up the shortfall. If there are none, then the bequests will be reduced in the following order of priority: 1) the residue under the Will; 2) general money bequests (a specific amount is named but it is not from a specific source); 3) money bequests payable from specific sources (from named assets); and 4) bequests of specific property. If there are sufficient assets but not enough cash to make distributions, then the Executor must decide which assets to sell and which to distribute to beneficiaries “as is”. If the estate owns real estate that the fiduciary wishes to sell, then it will be necessary to obtain a Release of Lien from New York State.

- **Consider exempt or homestead property.** If there are furniture and personal effects in the home, such property is not automatically deemed joint property. Such items are generally considered as belonging to the surviving spouse, apart from those items that are specifically given to others as per the decedent’s Will.
- **Distribute the remainder of the estate assets to the beneficiaries of the Will, per the terms of the Will.** Do so once all expenses, claims and taxes have been paid. The fiduciary may not distribute expenses before seven (7) months have passed or he/she/they will be personally liable if there are insufficient remaining assets in the estate.
- **Determine whether a formal accounting is necessary or if a simple receipt and release is sufficient before making distributions.** Recall that a surviving spouse, absent a prenuptial agreement or marital waiver, is entitled to an elective share to one-third of the decedent’s estate in lieu of whatever she received in the Will. If a surviving spouse wishes to exercise his/her/their right of election, then he/she/they must do so within six (6) months of the decedent’s date of death, absent an extension by the court.
- **Take statutory commissions if you are required to take them.** Unless the Will states otherwise, the fiduciary is entitled to receive statutory commissions and be reimbursed for reasonable out of pocket expenses. Commissions are calculated statutorily based on the value of the estate which have been personally distributed by the fiduciary and are deemed as income for the fiduciary’s personal tax purposes.

Most probate and administration matters take anywhere from six (6) months to more than a year to complete. During this process, as fiduciary you have a duty to diligently handle the decedent’s estate, creditors, and heirs. Always prioritize these interests while carrying out your fiduciary duties.