

# Executor's Checklist

## **Decide Whether or Not Probate Is Necessary**

Probate isn't necessary for many common assets. No probate is necessary to:

- pass real estate and other assets owned in joint tenancy to the surviving joint tenant
- transfer bank accounts and securities registered in "payable on death" form to beneficiaries
- transfer funds in IRAs and retirement plans to named beneficiaries
- transfer property left to the surviving spouse (in some states)
- transfer assets held in trusts (such as living trusts or AB marital bypass trusts) to named beneficiaries.

The deceased's home state may also have streamlined probate procedures for small estates. Whether probate is necessary commonly depends upon the size of the estate, minus all the non-probated assets—that is, anything that can be transferred outside of probate.

- If probate is not required, go to “Handling an Estate that Doesn’t Go Through Probate,” below. If probate is required, go to “Probating an Estate.”

## **Handling an Estate That Doesn't Go Through Probate**

- Locate and secure the deceased person's assets and carefully manage them until you distribute them.
- Handle day-to-day details, such as terminating leases and other outstanding

contracts, and notifying banks and government agencies of the death—for example, the Social Security Administration, the post office, Medicare, and the Department of Veterans Affairs.

- Using money left by the deceased person, pay continuing expenses—for example, mortgage payments, utility bills and homeowner's insurance premiums.
- Using money left by the deceased person, pay any debts the deceased person owed. (If there isn't enough money to pay them all, consult a lawyer. State law gives certain creditors priority.)
- Pay income taxes. Income tax returns must be filed for the year in which the person died.
- Supervise the distribution of property to the people entitled to inherit it according to the will.

### **Probating an Estate**

- File the will in the local probate court and ask the court to confirm you as executor. You may want to hire a lawyer to prepare the paperwork or to help you with the process. (See “Decide Whether or Not to Hire a Lawyer,” below.)
- Send notice of the probate proceeding to the beneficiaries named in the will and, if necessary, to certain close relatives—in most cases, a surviving spouse and children—who would have been entitled to property if there was no valid will.
- Locate and secure the deceased person's assets and carefully manage them during the probate process, which commonly takes about a year. Depending on the contents of the will and the financial condition of the estate, this may involve

deciding whether to sell real estate or securities owned by the deceased person.

- Handle day-to-day details, such as terminating leases and other outstanding contracts, and notifying banks and government agencies of the death—for example, the Social Security Administration, the post office, Medicare, and the Department of Veterans Affairs.
- Set up an estate bank account to hold money that is owed to the deceased person—for example, paychecks and stock dividends.
- Pay continuing expenses—for example, mortgage payments, utility bills, and homeowners insurance premiums—if survivors or tenants are still living in a house owned by the deceased person.
- Pay any debts that the estate is legally required to pay. You must also notify creditors of the probate proceeding; the required method of notice will be set out by state law. Creditors then have a certain amount of time—usually about four to six months—to file a claim for payment of any bills or other obligations you haven't voluntarily paid. As executor, you decide whether or not a claim is valid.
- Pay income taxes. Income tax returns must be filed for the year in which the person died.
- Pay estate taxes if necessary. It's unlikely, but state and federal estate tax returns may be required. Only very large estates owe federal estate tax; until 2008, if someone leaves less than \$2 million worth of property, no federal estate tax is due. (And any amount of property left to a surviving spouse who is a U.S. citizen is estate tax-free.) This exempt amount will rise to \$3.5 million in 2009, and the federal estate tax is scheduled to be repealed in 2010. However, the tax will reappear in 2011 unless Congress extends the repeal. More and more states are

collecting estate taxes of their own as well. Some states impose inheritance tax; rates depend on who inherits the property. Check with your state's taxing authority.

- Supervise the distribution of property—such as cash, personal belongings, and real estate—to the people or organizations named in the will or entitled to inherit under state law.
- When debts and taxes have been paid and all the property distributed to the beneficiaries, ask the probate court to formally close the estate.

### **Decide Whether or Not to Hire a Lawyer**

Many people think that probate requires hiring a lawyer. Although this is often a sensible choice, especially for estates with lots of different types of property, significant tax liabilities, or the potential for disputes among inheritors, it is not mandatory, and you may decide to handle the paperwork yourself. This makes good sense if you have access to good self-help materials (from private publishers or the probate court itself), particularly if you are a main beneficiary and you don't expect any complications collecting and transferring the assets.

Essentially, handling a probate court proceeding requires shuffling a lot of papers through the court clerk's office; in the vast majority of cases, there are no disputes that require a decision by a judge. You may even be able to do everything by mail. Doing a good job requires persistence and attention to tedious detail—not necessarily a law degree.

Here are some ways to get help if you decide against hiring a lawyer:

- Probate court clerks commonly answer basic questions about court procedure but they staunchly avoid saying anything that could be construed as legal advice. Some courts, however, have lawyers on staff who look over probate documents; they may point out errors in your papers and tell you how to fix them.

- In many law offices, lawyers delegate all the probate paperwork to paralegals. In some areas of the country, experienced paralegals have set up shop to help people deal directly with probate paperwork. These paralegals do not offer legal advice; they just prepare documents as you instruct them. They can also file papers with the court for you. To find a probate paralegal, look in the yellow pages under Typing Services or Attorney Services. Make sure that the person you hire has lots of experience in this field and can provide you with references to check out.
- You may want to consult books written for nonlawyers. *The Executor's Guide: Settling a Loved One's Estate or Trust*, by Mary Randolph (Nolo), is a complete guide to an executor's duties. *How to Probate an Estate in California*, by Julia Nissley (Nolo), leads you through the California probate process step by step. Although the forms included with the book are used only in California, the book contains much information that would be valuable background in any state.