The Estate Settlement Timeline

Date of Death | Months 1-3 | Months 4-6 | Months 7-9 | Months 10-12 | Months 13-16

3 Months After PR Appointed:
Probate Inventory due

6 Months After Death:
Alternate valuation date

6 Months After Will Allowed:
Deadline for spouse to waive will and request statutory share

9 Months After Death:
Estate tax returns due unless obtain extension

Deadline for beneficiaries to disclaim (i.e., refuse) assets

12 Months After Death:
Deadline for creditors to make claims

Deadline for PR to pay pecuniary (i.e., cash) devises

15 Months After Death:
Estate tax returns due if extended

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WARNECK
LAW OFFICES

3 Summer Street
Hingham, MA 02043
Phone: 781.740.0505
warnecklaw.com

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The Estate Settlement Process

Where to Start – What to Do – When to Do It

Someone you love has just passed away. You're the "responsible adult" in the family. Everyone is looking to you for guidance. It's up to you to settle your loved one's affairs and to do it quickly, fairly, and completely.

Now what? What do you need to get? Where do you get it? What do you need to do? How do you do it? Who can help? Who's going to pay for all this? How do you get control of this situation? Where do you even start?

Start here.

This is a brief outline of what, in the typical case, a family needs to do to put a deceased loved one's affairs in proper order. It can't possibly cover everything that might be required or advisable for your family's situation, but it does address many of the basic issues. I have included a timeline to give you a sense of where the different categories fit within the estate settlement process, so you can better understand what you need to do and when you need to do it.

1. Funeral and Family

When someone has died, no matter what the circumstances, the family's initial focus is, naturally, on putting their loved one to rest and on caring for each other. Work with your funeral director and take the time to make funeral and burial arrangements that will best honor your loved one and allow others to express their love, grief, and faith.

Your funeral director will probably help you with two initial administration matters. First, funeral directors will often notify the Social Security Administration for you. This is important to stop any benefits being paid to the decedent (otherwise you'll get a check or direct deposit that you have to give back) and to secure any survivor's benefits (such as the $255.00 lump sum death benefit payable to a surviving spouse and monthly benefits payable to certain family members) that may be available.

Second, funeral directors will often obtain multiple certified copies of the death certificate. You will likely need several of these throughout the estate settlement process, so take your funeral director up on any such offer. Otherwise, when you need one later on you will have to write to the relevant town hall or records office.

2. Cash Part One

Expenses arise almost immediately after someone's death. They include funeral and burial expenses, honorariums to religious ceremony leaders and musicians, flowers, memorial meals, and the like. These expenses are all properly charged to the decedent's estate, but early on no one can access estate assets to pay them. So the family needs to raise some cash quickly. Family members may be able to make payments from an account that was jointly held with the decedent, or they may pay expenses from their own funds. In either event, they can be reimbursed by the estate once a personal representative is appointed. If there is money in the estate, no one needs to worry about footing any of the bills themselves.

3. Documents

Gathering documents is one of your first jobs because the documents will tell you what assets your loved one had and where those assets need to go. They will also help you identify the open loops from his or her life. The estate plan documents, i.e., the decedent's will and any trusts, are very important, but other, more ordinary documents will be critical to settling the estate. They include bank and investment account statements, retirement account statements, life insurance policies and statements, medical insurance and other benefits statements, real estate deeds and title documents, leases, tax returns, credit card statements, and outstanding bills.

Sometimes getting these documents can involve a bit of a treasure hunt and be quite frustrating, but you have to take a good look. Don't assume that what you know about is all that exists. Many individuals keep some or most of their personal financial affairs private, even from their own children. If there's something out there, you need to know about it now so you don't have to undo or redo any of your work later on. So look hard and look everywhere.

While gathering documents, if your funeral director hasn't already done so for you, you need to get several death certificates, which you will have to provide to banks and other institutions in order to transfer assets. You can get death certificates from the town in which your loved one died. Call the town hall and ask who you need to contact. It's often the town clerk's office or records office. You usually have to make a written request and pay a fee (about $30) for each, then the office will mail you the certificates.

4. Life Insurance and Benefits

It is important to make life insurance claims as soon as possible for the liquidity that they provide. Claims are usually paid within weeks, and the named beneficiary, such as the surviving spouse, may really need it. If the benefits are payable to a named beneficiary, he or she can use the funds to cover administration expenses and get reimbursed by the estate later on.

If the life insurance benefits are payable to the decedent's estate itself, making the claim will be trickier. You will have to get the estate's personal representative appointed first, then he or she will have to make the claim and receive the death benefits on the estate's behalf.

When you make your life insurance claim, be sure to request a Form 712, which states the nature of the policy and the benefits provided, for later submission with estate tax returns.

You should also file for other available benefits as soon as possible. There may be survivors' Social Security benefits, military and veterans' benefits, state benefits, or pension or annuity benefits available. Some of these benefits take a long time to get, so it's important to get started as soon as possible.

5. Terminating Lifetime Benefits and Services

It is important also to notify all of the various benefits and service providers that worked with the decedent so that the benefits or services can be terminated or appropriately modified. You will need to contact the Social Security Administration if you or your funeral director hasn't already. Social Security will notify Medicare, and you need to notify any other medical insurance or Medicare gap insurance provider. Any other personal care services, utilities, subscriptions, and automatic payments should be terminated if they are no longer needed.

Put a priority on Social Security and the various medical insurance providers, but do as much as you can with the others as early as you can because it will reduce the regular paperwork that you have to deal with going forward and because these things are much easier to address early on than after several months have passed. In many instances, you can do this without having a personal representative appointed yet, but some things will need to wait until then. So do what you can, and keep track of the rest to deal with later.

6. Assets

As is the case with documents, getting an early handle on the decedent's assets is really important. Some assets you simply need to identify as requiring later action by other family members or the personal representative once he or she is appointed. Other assets, primarily real estate and tangible assets (cars, furniture, jewelry, art, collections) will need to be secured almost immediately and insured properly. The non-tangible assets will include bank accounts, investment accounts, retirement accounts, and the like. You also need to determine, for future reporting (see No. 8 and No. 11), the values of all of the assets as of the day the decedent passed away. If any single tangible item (like a grandfather clock or a musical instrument) or a collection of tangible items (like jewelry, art, stamps, guns, or coins) is likely worth more than $3,000, you will need to have a formal appraisal done.

7. Real Estate

A number of issues will arise during the settlement process with respect to real estate owned by the decedent, such as the family home, a vacation condominium, or an investment property. Early on, you need to identify, secure, and insure the real estate. You also need to determine its value. A realtor can prepare a basic opinion of value that will be sufficient for most purposes. You may need to pay a few hundred dollars for it, or a realtor might prepare one as part of a listing relationship if the property is to be sold.

During the settlement process, you will need to manage and maintain the property in addition to keeping it insured. That means paying the real estate taxes, paying the mortgage, paying the utility bills, keeping the property secure and in good repair, making sure the pipes don't freeze in the winter, and all of the other usual joys of home ownership.

Pay particular attention to insurance. Know what you have for coverage and what it actually means. And make sure the policy is valid under the circumstances. A regular homeowner's policy won't work if there is no one living there. A good property and casualty insurance agent can be very helpful with this.

At some point during the estate settlement process you will need to clear title to the real estate. Clearing title means ensuring the record of ownership at the county registry of deeds is accurate and without defects. For example, a deed may be necessary to convey the property to the person who the decedent had named to receive it. A release of the estate tax lien or an affidavit that no estate tax is due will be required. Clearing title is obviously important if you are trying to sell the property soon after the decedent passed away since no one will buy it until title is clear. But even if you're not, the title issues will remain and can cause big problems for a later sale. It is much easier and more efficient to clear title during the estate settlement process, so don't avoid it just because you have no plans to sell the property.

8. Probate

The term "probate" refers generically to the administration of an estate under the supervision of the Probate and Family Court. This is where most people contemplate getting legal help, and rightly so because the process is complex and full of pitfalls. Especially under the recently enacted Massachusetts Uniform Probate Code, there is very little room for error. Get it wrong, and you're stuck.

The probate process is required with respect to one's probate estate, which includes everything that has not passed to a survivor pursuant to joint ownership or a beneficiary or transfer-on-death designation. Thus, one spouse's interest in a home held jointly with the other spouse will pass automatically to the surviving spouse apart from the deceased spouse's probate estate, as will retirement account benefits and life insurance proceeds when the spouse is the named beneficiary. But when the decedent owned a house or account in his or her name alone, it is part of the decedent's probate estate.

If you have been nominated in your loved one's will to serve as the personal representative, or if you have otherwise been asked to serve, you will file a petition with the Probate and Family Court seeking two things. First, you will ask for allowance of the will (if there is one), which is basically the court's approval establishing the will as genuine and the operative instructions for the administration and distribution of the decedent's probate property. Second, you will ask that the court appoint you as personal representative. You will need to file several documents, including the petition, the original will, and a death certificate, along with the required filing fee. You will also need to provide proper notice to various interested persons and government agencies, including by publishing notice in a local newspaper.

Once the will has been allowed and you have been appointed, you will have the authority and the responsibility to marshal the estate assets, pay debts, and make distributions. You will need to provide notice to the appropriate persons and file an estate inventory that lists and values everything in the decedent's probate estate. Perhaps at some points along the way, but definitely later, after paying all of the debts and making all of the distributions, you will file an account with the probate court. The account itemizes on three schedules the assets you started with (Schedule A), the payments and distributions you have made (Schedule B), and what you have left (Schedule C). In your final account, which needs to be approved by the court before your job is finished, the totals on Schedules A and B will be the same and the number on Schedule C will be zero (since you're done, you have nothing left; or, rather, you have nothing left, so you're done).

The probate process lasts at least a year from the date of the decedent's death because that is how much time creditors have to make claims against the estate. The process often takes longer, however, because of difficulties and delays in identifying and valuing assets, filing tax returns, and making distributions. At least sixteen to eighteen months is typical, and a complex estate can take years to fully administer.

9. Cash Part Two

The second phase of raising cash comes after the personal representative has been appointed because someone now has access to estate assets. You will need to open a bank account for the estate and move any estate cash into it. Then you can reimburse other family members for expenses that they covered and pay the estate's expenses yourself going forward.

10. Income Taxes

A number of income tax matters will have to be attended to throughout the estate settlement process. How much time you have to spend to address any particular requirement will depend on the circumstances and when the decedent passed away. First, you will have to file the decedent's final individual income tax return for the year of his or her death. Second, once you are appointed as the personal representative, you will need to obtain a federal tax identification number for the estate, pay quarterly estimated income taxes to the state department of revenue and (later) the IRS, and file estate income taxes each year until the estate is closed. Third, if there is a funded trust (a trust with assets in it), you will have to get a federal identification number, then pay estimated taxes and file trust income tax returns for every year that the trust remains funded.

11. Estate and Gift Taxes

Federal and state estate tax returns and any necessary gift tax returns are due nine months after the decedent's date of death, though you can request a six-month extension. Unlike taxes due on the income of the decedent, the estate, and any trust, the estate tax is a tax on the transfer of assets occurring at the decedent's passing. A decedent's taxable estate, in contrast to his or her probate estate, includes every asset in his or her name at death, as well as any significant assets transferred to someone else during his or her life. It also includes any proceeds from his or her life insurance coverage.

A federal estate tax return is required if the value of the decedent's assets exceeds the federal exclusion of $5 million, and a Massachusetts return will be required if the value of the decedent's assets exceeds the state filing threshold of $1 million.

If the decedent gave gifts worth more than the annual gift tax exclusion ($14,000 now; $13,000 last year) in any particular year, he should have filed a gift tax return for the year. If he didn't, you will have to do it. This is important because the $5 million federal exclusion applies both to assets passed at death and to lifetime gifts exceeding the applicable annual exclusion amount. So while the decedent, had he submitted a gift tax return, would have calculated a gift tax due, he would have applied part of that unified exclusion to wipe out the tax. The gift tax return calculates the resulting reduction to the exclusion available at death, so it must be prepared and filed as a prerequisite to the estate tax return, which will take that reduction into account.

This is a really good place to get a qualified lawyer's help. The estate tax is incredibly complicated, and the price of mistakes can be very high. You really need to get this right.

12. Distributions

The whole point of the estate settlement process, of course, is to actually pass on your loved one's assets. This is where you give everyone pieces of tangible property; transfer car titles, real estate, bank accounts, and investment accounts; roll over retirement accounts; and fund ongoing trusts. This usually happens late in the process. You can make partial distributions along the way, but it is important to keep a sizable reserve to pay ongoing expenses, income and estate taxes, and any claims made before a year has passed. Once all of the assets are distributed, the personal representative files a final account and gets final court approval, and the job is finally done.

Please contact me to discuss your situation and how I can help you navigate and complete the process of putting your deceased loved one's affairs in proper order.

The foregoing is provided solely for informational purposes and does not constitute legal advice. It does not address specific situations, and no attorney-client relationship is created by its provision or receipt. Contact an attorney for legal advice that is specific to your circumstances.

WARNECK
LAW OFFICES

3 Summer Street
Hingham, MA 02043
Phone: 781.740.0505
Fax: 781.740.2772