



WHAT TO DO WHEN SOMEONE DIES

A Guide on Post-Mortem Administration

This guide has been prepared to give the family an idea of some of the actions which may need to be taken when someone dies. Because family situations differ greatly, because the size and make-up of estates vary greatly, and because decedents may have very different estate plans (or lack thereof), this discussion is general in nature and SHOULD NOT be viewed as legal advice.

This guide provides a list of some things to be considered, many of which may not be applicable to your situation. At a minimum you may want to circle those items that might be relevant to discuss with your attorney.

Some clients may have will-based estate plans, under which a "Personal Representative" gathers and distributes the estate. Other clients may have living trust-based estate plans, under which a "Trustee" gathers and distributes the assets.

In this memo we shall refer to all wills and trusts as "estate planning documents" unless otherwise indicated. Similarly, we shall refer to the person who gathers and distributes the trust or the estate as the "Executor" (even is the Trustee) unless otherwise indicated.

Nevertheless, keep in mind that the Personal Representative under a will may have additional court reporting and other court obligations which may be avoided if the estate is owned by a living trust or passes under joint tenancy or beneficiary designations.

We have reviewed several books on settling an estate. Many are very weak, and some outright dangerous. We are pleased to recommend one book published by Nolo Press written by Mary Randolph and entitled, "The Executor's Guide." It is reasonably thorough and contains over 400 pages, but it is not state specific; hence the need to consult with a local attorney. It is also reasonably priced (\$30.00 from Amazon).

Pre-Death Considerations

No discussion of what needs to be done after someone dies would be complete without a discussion of some of the things to consider when death is near:



- 1.** Prepare and/or update Estate Planning Documents. Consider leaving assets in trust for the disabled child, the spend-thrift child or the child experiencing financial difficulties, the child on Medicaid, or the child in a bad marriage.
- 2.** Prepare a list of assets, insurance policies, etc. Discuss the list and location of relevant documents with your Executor and other family members if appropriate.
- 3.** Consider gifting and other actions to reduce estate taxes and/or achieve Medicaid eligibility for nursing home costs.
- 4.** Consider rolling over 401(k) to IRA, or possibly converting a Traditional IRA into a Roth IRA.
- 5.** Update beneficiary designations and review any joint tenancies. Remember that such assets will not pass pursuant to your estate plan unless payable to your trust or estate, which may or may not be advisable depending upon your specific situation.
- 6.** Set up Social Security & pension checks for direct deposit. Set up direct payment of utility bills and insurance from your checking account. Direct payments to and from your checking account will reduce the workload for your family if you become disabled and reduce the chances of lost checks and lapsing insurance policies.
- 7.** Consolidate investment accounts, securities, and DRIP's into one account. It is a lot easier for your Executor to deal with one account here in Colorado than numerous transfer agents in Boston and New York.
- 8.** Consolidate bank accounts and CD's into one bank, or just a few banks if FDIC limits (now \$250,000) are of concern to you.
- 9.** Discuss funeral and burial desires with your family. Don't necessarily pre-pay, but do pre-plan. What is it going to cost? Get a "price list" from your local funeral home. Consider cremation if cost is of concern to you.
- 10.** Write your own obituary - Review the newspaper for examples. Do you even want an obituary published? It is not required but may help notify friends and others of your passing away.
- 11.** Keep family members informed as to ALL of the above, including location of important documents and persons to notify upon of your death. Perhaps they should use your Christmas card list or address book.
- 12.** Consider selling assets on which you have a loss. If you have a capital loss carry-over, consider recognizing gains prior to death to offset those losses.



13. If you have a living trust, be sure your assets are titled in the name of your trust and that the beneficiary on your life insurance policies is your trust. For most married persons the primary beneficiary on IRAs should be your spouse, and then either your children or your trust. Discuss your specific situation with your attorney for the latest recommendations.
14. A review of the family planning, estate tax planning, and even income tax planning with your attorney and tax advisor may be appropriate once death becomes imminent.

Post-Death Considerations

The job of the Executor is to make the funeral arrangements, gather the assets, pay the proper debts, expenses, and taxes, and then distribute the remaining assets to the beneficiaries pursuant to any will or trust.

Numerous requirements are imposed on the Executor to report to the beneficiaries, the IRS, the probate court (if probate is opened), and in some cases, to the creditors of the decedent and possibly others.

The Executor has a duty to protect and preserve the estate's assets. The Executor should attempt to put together an inventory of all assets and their values as of the date of death. If probate is opened, the court requires that this be done within 90 days of death.

Even if probate is not opened, we suggest that the beneficiaries be notified of the known assets and liabilities as soon as possible after the decedent's death. Keeping beneficiaries notified of what is going on is the easiest way to avoid litigation which can devastate an estate. Discuss with your attorney which beneficiaries are entitled to a copy of the will or trust as well as a copy of the inventory and accounting.

The Executor should collect the various assets. Valuables, such as securities, jewelry and other personal items of substantial value should be kept in a safe place such as a safe deposit box, to which only Executor has access. If the decedent completed a "Personal Property Memorandum," that should be consulted as to the disposition of certain of these valuables.

So how does the Executor go about getting assets liquidated or titled in the name of the estate or reflecting that he/she is now the trustee? The first step is contact the "keeper of the title", that is, the bank, the brokerage firm, or the transfer agent. Each asset will have its own specific requirements. Even similar assets may require different forms.

If the asset is titled in joint tenancy, all that is usually needed is a death certificate to vest title in the surviving joint tenant. A new account form and W-9 for taxes may also be required.

If the asset has a surviving named beneficiary, all that is needed is a death certificate and usually a beneficiary claim form. The insurance company, IRA administrator, or employer will provide you with their



forms. You will need to contact such organizations and request the appropriate form. They may ask to see a copy of the death certificate first.

If the property is titled in just the decedent's name with no surviving joint tenant or named beneficiary, then it is part of the decedent's "probate estate" and the disposition of such assets (and only those assets) is controlled by the decedent's will. Probate must be opened and "letters" from the court issued which prove your legal capacity to act on behalf of the decedent' estate.

There is an exception: If the decedent is a resident of Colorado and total probate estate is under \$68,000 (for 2018, adjusted for inflation) a small estate affidavit is usually sufficient to liquidate the asset or transfer title.

You will need to apply for a new tax ID number for the estate and for each trust involved. Consult with your attorney regarding probate documents, the small estate affidavit, registering and trusts, and obtaining tax identification numbers.

If the asset is owned by the decedent's revocable living trust, then the successor trustee needs to prove to the "keeper of the title" that the original trustee(s) are now deceased (a death certificate) and that the successor trust is authorized to act. Usually a death certificate and the "Affidavit (For Property of Trust)" or "Statement of Authority" should be sufficient, but often the "keeper" will request a copy of the first and last pages of the trust, and the page which lists the successor trustees.

Sometimes they may request a full copy of the trust. If so, it is usually easier to comply with the request than to fight them on this issue. They may also request an attorney's opinion that the trust is valid and still in full force and effect under local law. We can provide that as needed.

The Executor should maintain an accurate record of all deposits into and withdrawals from these accounts, reflecting the amount and sources of each deposit and the amount and purpose of each check drawn. It is advisable to make copies of all deposits, including copies of the checks, and to request that cancelled checks (or a copy thereof) be sent to you with each bank statement. This information is likely to be needed later on for income tax and beneficiary reporting purposes.

If the decedent was collecting Social Security benefits, the funeral home will usually notify them. The funeral home usually will order the death certificates, and add the expense to your bill. If there is a surviving spouse, he or she may qualify for Social Security benefit (or larger benefits.) A surviving spouse will generally receive the larger of his or her Social Security payment or the decedent's payment.

With respect to assets which are not sold immediately, verify that sufficient insurance coverage is maintained. Who is driving the decedent's car? Is the family home unoccupied?

The answers to those questions could nullify the existing coverage. Discuss these issues with your insurance agent to ascertain that proper and sufficient coverage is maintained.



Creditor claims may need to be paid and, depending on whether they are paid from a probate estate or from the Trust, the Executor may have different responsibilities and latitude. Discuss payment priorities with your attorney if you think there may be insufficient assets to pay all creditors.

For larger estates, federal estate taxes may need to be paid and, even if taxes are not due, a return may be required to be filed. Many estates may also find it advantageous to file an estate tax return if there is a surviving spouse, even if such filing is not mandatory. Discuss the estate tax return and "portability" with your attorney. Colorado has not had an estate tax since 2005.

There may also be federal and state income tax returns due for both the decedent and the decedent's estate and/or trust. An attorney or accountant should be consulted. Professional fees may be paid to the attorney, accountant and others, including the Executor, from the estate assets.

Do you have to wait until all assets have been liquidated before making distributions? Generally no, but be sure to keep a cash reserve to cover unexpected debts, expenses, and taxes. Also be cautious about making distributions before the "survivorship" period and "creditor period" has expired, as you could be personally liable for any losses sustained as a result of such distributions. Discuss the proposed amount and timing of distributions with your attorney.

The Executor may be allowed to distribute assets in kind or sell assets and distribute cash. The provisions relating to the distributions to beneficiaries are generally contained in the estate planning documents.

If such documents are silent, the usual recommendation when there is more than one beneficiary is to sell all assets and distribute cash.

Before the final distribution of the remaining assets, it is often advisable for the Executor to obtain a signed acceptance of the inventory and final accounting and obtain a release from each beneficiary. If any controversy arises, a court hearing (or "Formal Closing") may be necessary to resolve differences.

Depending on the estate plan, the Executor may be required to hold an inheritance in trust for one or more beneficiaries. The Executor is then responsible for additional reporting, management of assets, and distributions consistent with the controlling document. Discuss the requirements and responsibilities of you as the trustee with your attorney.

Although the Executor has the final say on many issues, the Executor is held to very high standards: to avoid self-dealing; to handle and invest funds prudently; to treat the beneficiaries (including him or herself) fairly; to properly report the inventory of assets and income and expenses to the beneficiaries.

The failure of the Executor in any of these capacities is both grounds for removal and being held personally liable. The courts tend to deal very harshly with Executors who breach their fiduciary duties. Every year or



two we hear about fiduciaries being sentenced to jail for the abuse of their powers. Your attorney can help you avoid both civil and criminal liabilities.

Many Executors have found check lists to be helpful. We have included the following lists which are fairly extensive. No doubt many of the items will not apply to every situation. We choose to be overly thorough, and allow you, the reader, to select which ones might be applicable to your situation. If you do not understand a particular item, you may wish to discuss it with your estate attorney. We would be happy to assist you in the event you do not have an estate attorney.

1. Initial Items for Family To Do:

- If you are alone, telephone a friend or family member who can spend the next few hours with you.
- Notify family members.
- Make funeral arrangements.
- Arrange for obituary/call newspaper.
- Obtain the appropriate number of death certificates (four plus one for each asset.) Three accounts at one bank will require only one certificate. Three cars transferred at different times will require three original death certificates. Many institutions will return the original if you ask them to do so when the certificate is submitted.)
- Arrange for care of minor children, pets, etc.
- Secure the residence. Disconnect any garage door openers.
- Notify your attorney and make an appointment immediately. Often it is beneficial for the family to meet with the attorney while the family is in town for the funeral.
- Contact the V.A. if decedent was a veteran; Consider burial at Ft. Logan. VA will provide a headstone, flag, etc. You may need a copy of the decedent's discharge papers (DD-214).
- Create a list of the decedent's assets and their values as of the date of death, indicating the name of the asset, account number, the manner in which title is held including if it is in joint tenancy, the value of date of death, and the name(s) of the beneficiaries, if any. A worksheet for this purpose is included with this report. Make extra copies as needed.
- Notify the post office of the death and arrange for the collection of mail for the decedent.
- Avoid entering into contracts for anything, and avoid spending, gifting or lending large sums of money.
- Prepare an agenda or list of questions to discuss with the attorney.
- Have the attorney prepare written or visual explanation of the estate plan.



2. Items Executor Should Bring to Initial Meeting With Attorney:

- Original estate planning documents
- Death certificates
- Preliminary Asset and Liability information (estimates are OK)
- List of questions/special concerns/immediate cash needs

CAUTION: DO NOT remove the decedent's name from assets nor file beneficiary claim forms (on life insurance, IRA's, etc.) before meeting with the attorney. We often recommend leaving the decedent's name on a checking account so if you ever get a check payable to the decedent you have a place to deposit it.

3. Items to Discuss at First Meeting With Attorney

- Identify and illustrate overall plan and distribution scheme.
- Review checklist/questionnaire from Executor; or give to Executor to complete.
- Gather preliminary estimates of assets and liabilities.
- Discuss income tax basis adjustment of assets.
- Did decedent and spouse ever live in a community property state? Is there any "community property"? (The CP states are LA, TX, NM, AZ, CA, NV, WA, ID, WI, AK).
- Determine if the deceased made taxable gifts after 1976.
- Discuss adequacy of insurance coverage on real and personal property.
- Determine title to assets (and beneficiaries if applicable).
- Was decedent a trustee, beneficiary, power-holder of any other trust; get copies of all relevant documents.
- Determine whether a probate proceeding is necessary.
- Discuss the need for probate in other states.
- Discuss assets not under control by Executor, such as joint tenancy assets or assets with named beneficiaries.
- Review cash requirements.
- Initial estate tax estimate.
- Surviving spouse's cash requirement.
- Administration expense estimate.
- Beneficiaries' immediate cash needs.
- Discuss how trusts and estates are taxed.
- Have Executor sign authorizations to obtain records or information.
- Have Executor locate and inventory contents of all safe deposit boxes. Should others/attorney be present for protection of Executor?
- Arrange for safekeeping of any assets at risk (personal property).
- Discuss liquidation of assets/distributions.
- Discuss outstanding liabilities of decedent; order of payment.



- Discuss “notice to creditors” procedure (by publication) and the one-year statute of limitations on claims.
- Discuss Executor's fiduciary duties.
- Discuss Executor's compensation and maintenance of time records. Discuss bookkeeping requirements (e.g., best to use one bank account for receipts and disbursements)
- Discuss attorney compensation and fee estimates.
- Discuss need for regularly scheduled meetings.
- Calendar next follow-up meeting
- Discuss need for appraisals and step-up/down in basis.
- Is surviving spouse not a U.S. Citizen?
- Discuss Disclaimers and how they might benefit the family.
- Mail original of Will to probate court clerk. This is a legal requirement even if probate is never opened.
- Sign fee agreement letter or receive disclosure of fee.
- Executor's fiduciary duties letter or handout.
- Authorize attorney to communicate with others.
- Obtain name, address, phone number, and taxpayer identification number for each trust or estate beneficiary.
- Review requirements for specific assets categories:
 - Qualified S Corp. (trust election needed?)
 - Partnership (IRC §754 election? Income tax return?)
 - Family farm or family business special elections?
 - Toxic waste issue with any real property?
 - Any outstanding options or escrows?
 - Promissory notes - delinquent or in foreclosure?
 - Any business or profession needing immediate attention?
- Is there an ESOP?
- Federal/state payroll tax reporting?
- Notice to Dept. of Human Services (Medicaid) required?
- Small Estate Affidavit (If probate not opened)?
- Surviving spouse IRA rollover?
- Discuss other IRA issues?
- Exercise of options (Buy/Sells, Stock options/others)?
- Any Real Estate under contract?
 - Statutes of Limitations with appropriate attorney
- Tax refund
- Wrongful death action
- Creditor Claims:
 - Publication if Probate opened (CPC=one year)
- Mailing notice to heirs regarding right to challenge



4. Calendar for Important Deadlines and Special Assets

- Form 706 estate tax return and state returns (due 9 months from DOD; or file Form 4768 extension to file)
- Alternate valuation date (6 months after DOD)
- Prepare and file form 8971 within 30 days of 706
- Disclaimer (9 months from DOD)
- Form 709 GSTT tax return (4/15 or extension date in year following gift)
- Form 1040 & State final personal income tax returns (4/15 or extension date)
- Form 1041 and State fiduciary income tax returns (4/15 or extension date)
- 65-day distribution after 12/31 (Income tax)
- Review trust income distribution terms
- First trust inventory/accounting due
- Status letters to beneficiaries-Request W-9 (ASAP)

5. Documents to be Prepared by Attorney

- Prepare probate documents and file if necessary.
- Prepare new trustee Statement of Authority.
- Prepare Trust Registration Statement if required by law.
- Send Form 56, Notice Concerning Fiduciary Relationship, to IRS.
- Prepare SS-4 to obtain tax ID number on estate and trust(s).
- Periodic attorney/heir meetings
- Attorney should probably prepare many of the documents listed under "4" (above)

6. Spousal/Beneficiary Estate Planning Considerations

- Review estate plan of surviving spouse; watch for conflicts.
- Review trust, will, powers of attorney, and other documents for adequacy of estate planning.
- Determine whether any changes need to be made in the spouse's estate plan; Update powers of attorney?
- Estimate size of surviving spouse's estate and advise on strategies to reduce estate taxes on his or her death.
- Determine if there are any hard to value assets.
- Determine if a beneficiary has powers of appointment that can or should be exercised; determine if beneficiary should be notified in writing.
- Discuss FDIC rules if more than \$250,000 is held in any one institution.



7. If Decedent has a Taxable Estate

- Does decedent have a taxable estate (over \$11,180,000/2018)?
- Discuss Alternate Valuation Date?
- Determine if there are any generation skipping transfer tax issues.
- Discuss how various assets are valued.
- Discuss who will prepare estate tax return.
- Discuss filing 706 for portability even if not required otherwise

8. Home and Other Property Operation and Management

- Maintain fire and casualty insurance; pay property taxes.
- Inspect for needed maintenance/repairs.
- Obtain keys; copy of leases, etc.
- Notify and work with any property managers: examine management contract; consider hiring manager; arrange for maintenance of structure and landscaping.
- Determine if notice to tenants is necessary or advisable; determine need to change rental payment arrangements, or cancel any leases if permitted and appropriate.
- Account for rental and security deposits; pursue any delinquent rent.
- Review leases; determine if any leases due to end or be renewed.
- Review for risk of toxic contamination.
- Maintain utilities (gas, electric, and water); protect from freezing.
- Notify assessor of where to send property tax bills.
- Notify insurance companies where to send policy invoices.
- Determine and pay property taxes when due; review assessor's value; consider appeal if high.
- Interview and retain appraisers: consider hiring directly as attorney's expert to protect privilege; request oral or draft reports before finalizing.
- Determine effect of high or low value on basis and estate tax.
- Determine if out-of-state counsel is needed to deal with out of state real estate.

9. Publicly Traded Securities

- Determine title to financial instrument
- If held directly, obtain copy of actual security.
- If held in nominee form, obtain copy of brokerage statement.
- Value security
 - Generally, the average between the highest and lowest quoted sales prices on the valuation date. Most brokerage firms can provide a DOD Valuation report.
- Consider transferring securities to a discount broker BEFORE selling them.



10. Mortgages and Notes (Payable to Decedent)

- Request copies of all loan documents.
- Determine if security interests have been recorded.
- Executor informs payor of Executor's address for payment of future loan installments.
- Determine value of mortgages, promissory notes, or contracts to sell land; consider applicable discounts; if valued at less than FMV of unpaid principal plus interest accrued to DOD, documentation required to support a lower value or worthlessness.
- Record releases when paid in full.

11. Liabilities, Claims and Debts

- Prepare a listing of all tax and non-tax, secured and unsecured, matured and contingent debts, claims, liabilities, obligations, liens, etc., of the decedent. Any lawsuits pending?
- Review all loan and other documents; determine if action can be taken to limit or eliminate contingent liabilities.
- Consider practical impact of one-year statute of limitations when dealing with claims.
- Consider notifying secured creditors of decedent's death to avoid missing notices of delinquency or default.
- Determine which debts/claims must be paid; request payment history; set up payment plan; keep payments current.
- Determine who is liable for payment: review documents creating the liability.
- Coordinate trust administration with litigation counsel if decedent is a party to litigation at death.

12. Life Insurance Proceeds and Other Death Benefits

- Obtain all original life insurance policies.
- Review ownership and beneficiary designations.
- Determine if death benefit is included in taxable estate.
- Determine if decedent owned policy on the life of another.
- Determine if any transfers of LI within three years of death.
- Determine if there are any "transfer for value" issues.
- Request claim forms from life insurance companies.
- Request Form 712 for each life insurance policy.
- File health insurance claims to cover the cost of the decedent's last illness.
- Are accidental death benefits applicable?
- Remind surviving spouse to apply for SSA funeral benefits.
- Remind Executor to notify SSA of death of decedent to terminate monthly benefits of decedent; SSA may "grab" payments made after death from account. Discuss possibility of an overdraft.



- Notify Dept. of Human Services within 90 days of death with copy of death certificate. if the decedent received Medicaid benefits or if the decedent was the surviving spouse of a person who received such benefits.
- Apply for veteran benefits if applicable.

13. Employee Benefits

- Pension plans: Stop payment/apply for spousal benefits if applicable.
- 401(k) plans: Consider options, including spousal rollover to IRA; rollover to inherited IRA for non-spouses. Manner, times, and restrictions.
- 403(b) plan (similar to 401(k) and offered by non-profit organizations).
- Employee stock ownership plan (ESOP).
- IRAs and qualified annuities. Discuss RMDs for inheritors.
- Stock options may have to be exercised within 30 days.
- Request letter from employer, plan administrator, IRA sponsor or insurance company setting forth all relevant details including both primary and contingent beneficiaries
- Determine proper valuation of decedent's interest in plans for estate tax purposes.

14. Household and Personal Effects

- Value household and personal effects; Consider use of affidavit if value is low.
- Appraise items of artistic or intrinsic value (e.g., jewelry, furs, silverware, paintings, antiques, books, vases, rugs, coins or stamp collections) if value of any one item is over \$3,000, collection of items over \$10,000.
- Review riders on homeowner's insurance policy.
- Consider safekeeping, security, or storage requirements.
- Consider videotaping or photographing assets.

15. Other Assets

- Airplanes, boats, automobiles and other automotive equipment
- Debts due decedent, other than notes and mortgages
- Farm products, growing crops, timber
- Income tax refunds
- Intellectual property (e.g., patents, copyrights, trademarks)
- Judgments
- Lottery winnings
- Mineral, oil and gas rights
- U. S. Savings Bonds (Discuss tax issues)
- Keep inventory list of all assets, even if not in trust or in probate estate as they may be needed for estate tax purposes.



- Is the decedent a beneficiary of an estate or trust?
- Guns, Firearms may need special attention

16. Accountings

- Determine what accountings are required (see estate plan).
- Consider "over-reporting" to beneficiaries; send copies of all statements, invoices, payment stubs, letters, etc.
- Determine if court approval of accountings is desirable.
- Send confirming letter to Executor and accountant regarding responsibility for preparation of accountings, form of accounting, and example format.
- Remind Executor to deposit all income and receipts in estate or trust bank account and to write all trust checks from same bank account to simplify accounting. Do not commingle estate or trust assets with personal assets.
- Obtain written waivers of accounting if desired.
- Make sure accounting records provide clear tracing of assets, income, and disbursements for later sub-trust funding.

17. Personal Income Taxes

- Determine who will prepare and file final returns of decedent.
- Determine estimated tax payments which may be due for surviving spouse or other beneficiaries.
- Joint return: may elect for decedent and surviving spouse if spouse not remarried before end of year; Thereafter, surviving spouse files as single unless dependents involved.
- Recognition of savings bond interest: if decedent had not elected to recognize and report interest income, may do so on final return or may recognize on fiduciary return or beneficiary's return (Series E or EE bonds).
- Medical expenses: may elect as income tax deduction if paid within one year from DOD; or as debt of decedent on 706 return.

18. Fiduciary Income Tax Returns

- Determine who will prepare and file estate/trust returns.
- Determine if a fiscal (non-calendar) year is desirable for the trust/estate and/o for the beneficiaries.
- File Form SS-4 with IRS to obtain taxpayer identification number for all new trusts, and for estate if probate opened.
- If over \$600 is paid to third persons (Executor, attorney, accountant, etc.) from trust or estate, issue Form 1099 to payees by January 31 and file 1099's with Form 1096 with IRS & CO by February 28.
- Discuss election for living trust treated as part of probate estate for income tax filings.
- Estimate estate/trust income and notify beneficiaries of their potential tax income based on their distributions.



- Consider whether distributions within first 65 days of tax year should be treated as made in prior year.

19. Court Proceedings

- Deliver original will to court clerk.
- Determine if probate necessary after verifying title to assets; if necessary, open probate; notify beneficiaries.
- Determine applicability of spousal elective share.

20. Disposition of Non-Trust Assets

- Joint tenancy: File death certificate to vest title in name of surviving tenant(s); Complete and file supplemental affidavit as needed.
- Beneficiary assets (Life insurance, IRAs, POD accounts, etc.): File death claim form to vest title in name of beneficiary or have proceeds paid to beneficiaries.
- Remainder beneficiary of life estate or beneficiary deed: record death certificate and supplemental affidavit to remove decedent's name for title.

21. Sale of Trust Assets

- Determine need for liquidity (estate tax, cash bequest, claims and debts, administrative costs).
- Determine whether cash distribution preferable to in kind distributions (beneficiaries may not want specific assets; transferring to beneficiaries as co-owners is often a bad idea).
- Ascertain if asset cannot be held in successor trust (trust language prohibits; trust not qualified as S corporation shareholder).
- Restrictions on sale (in documents or in other agreements, e.g., buy-sells, leases, recorded covenants or restrictions, rights of first refusal, existing contracts, etc.)
- If no preexisting arrangements:
 - Unsolicited buyers
 - Determining listing or sale price
 - Marketing by professional agents (realtors, business brokers, investment bankers, secondary market makers for limited partnerships)
 - Private marketing by Executor (but consider duty to obtain best price and terms)
- Purchases by Executor; potential conflict of interest issue; Consider full disclosure to, and consent from, beneficiaries. If contested, you lose!
- Consider obtaining court approval or instructions to protect Executor.
- Determine whether to notice beneficiaries or seek approval (obtain consents or waivers, or give informal notice).
- Determine if best deal for estate/trust and beneficiaries.
- If property to be sold on a carry-back note, best to get beneficiaries approval first.



- Consider effect of sale price on date of death or alternate valuation.
- Plan for timing of any gain on sale in best fiscal year for trust/estate and beneficiaries
- Consider effect of basis adjustment upon death.
- Determine if disposition of IRD item accelerates gain.
- Involve tax preparer in planning and reporting.

22. Estate, Gift and Generation Skipping Transfer Taxes

- Discuss applicability and requirements with attorney. This area of taxation is very complex, and not covered in detail in this report.

23. Distribution and Sub-Trust Funding

- Discuss why it is usually best to have income taxed to beneficiaries rather than to the estate or trust.
- Consider getting releases or agreements not to contest the will before making any distributions.
- Determine if any distributions should occur before end of calendar year (or during the 65-day election period).
- Ascertain the validity of the will or trust before any distributions are made.
- Consider liability of the Executor if assets are distributed to the wrong beneficiaries.
- Consider filing an action for court approval of inventory, final accounting, and distributions; notice beneficiaries.
- Consider existence of various liens and debts before making a distribution.
- Consider postponing distributions or sub-trust funding until expiration of one-year statute; filing of 706 return; or receipt of IRS closing letter.
- Determine whether income triggered on distribution of assets; Distribution of IRD items or funding pecuniary gifts with appreciated assets. Advise trustee/beneficiary.
- Calculate and set aside reserve amount.
- Determine if distribution carries interest one year after DOD or income earned.
- Obtain valuation of assets to be distributed as of distribution date, if needed.
- Make outright cash distributions, or transfer title to non-cash assets; if distribution is in kind to satisfy a pecuniary amount, note gain/loss.
- If distributed asset encumbered, have beneficiary formally assume liability.
- Determine name of each sub-trust; communicate to trustee, accountant.
- Obtain tax ID number for each new trust, except where income is attributable to surviving spouse and the spouse's SSN is used (e.g., marital trust)
- Determine what type of formula in trust instrument to determine required funding method
- Select date for funding sub-trusts; allocations to sub-trusts will be considered effective as of the selected date.
- Obtain valuation of trust assets as of selected date and complete allocations and transfers of title within a reasonable period of time (ASAP).
- Prepare written schedule of assets, with values, allocated to each sub-trust.



- If multiple beneficiaries, review trust instrument re: whether pro rata allocation required, or non-pro rata allocation is permissible re: avoiding taxable sale or exchange.

24. Final Review

- Review with trustee systems established for trust administration: bookkeeping, accounts and other records.
- Verify segregation of trust accounts.
- Review fiduciary duties with trustee; verify that trustee is attending to accountings; filing fiduciary income tax returns; reviewing investments; making distributions required or permitted under trust agreement; other duties.
- Distribute any reserve amount held back from distribution.
- List other items of concern by the Executor: