

Steps in Estate Settlement

Estate Planning Series #10 6/2016

Agricultural Business Management

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Introduction:

The decedent's Will or trust document dictates how their assets will be distributed. Will settlement is done through the court supervised process of probate. If the decedent has no Will, referred to as "dying intestate", the state of residence generally has a procedure that is followed. If the decedent has a simple Will and a surviving spouse, the assets will transfer to the surviving spouse through the probate process. If property is held Tenancy in Common, it is subject to the probate process as well. Trust settlement is a private process and does not require court supervision or probate.

The probate process in the United States is designed to settle the affairs of a deceased individual. It is a court-administered process in which a judge determines if a valid Will exists, decides who will be the personal representative for the decedent's estate, and approves the plan for the distribution of the decedent's assets. The primary function of the probate process is to determine what property was owned by the deceased, to pay off creditors and legally distribute the assets to the rightful heirs. To complete this process many considerations and several steps must be taken. In Minnesota, probate can take on average 12-18 months and can cost as much as an average of 2-3% of the estate value.

If a trust is involved, there will be a trustee or trustees. The trust must go through an administrative phase, the process for closing out the trust. This is a private process, does not involve the court, is not open to the public, and generally costs less and takes less time than probate.

Locating the Will or Trust Document:

If the decedent has a Will, the estate settlement process usually begins with trying to locate the decedent's most current Will. If a Will can be found, it usually names a personal representative for the estate. If the Will is not found in the home, it most likely is in a safe deposit box. Locating the key or combination is a first order of business. For a trust there will be a trustee or trustees named. They will be in charge of the settlement process. If no Will or trust can be located, you might check with the attorney (or law firm) of the deceased to see if they

have a copy of the Will or trust. Locating the most current Will or trust document is a crucial part of the settlement process.

Consult An Attorney:

Before going too far with the estate settlement process, you might want to select an attorney to help with the settlement procedure. Select an attorney with whom you are comfortable and who has experience in estate settlement. Your attorney should provide legal and practical guidance to get you through the estate settlement process. You may wish to discuss costs, including attorney's fees, during your first visit. In Minnesota, attorneys cannot base their fees on a percentage of the estate value and therefore most will use an hourly rate. However, some MN attorneys choose to charge a flat fee which must be based upon a "reasonableness" defined and found standard in MN statutes.

Secure Copies of the Death Certificate:

The personal representative (a Will) or trustee (trust) will need several copies of the official death certificate. Generally the funeral home where the deceased will be prepared will supply you with the death certificates. Insurance companies and other holders of assets will request them before they can make cash payments. Request four or five copies of the official certificate to begin with.

Inventory Assets:

Another initial step in the process is to inventory and list all assets in the estate. Once a list is finished, a fair market value will need to be assigned to each asset. Large taxable estates may require a certified appraisal. Assets such as land will also need a certified appraisal. Assets should be listed by categories and valuation taken as of the date of death. If the estate decides to use values as of six months after death for tax purposes, valuation will have to be made on that date also. The alternate valuation date is chosen if it reduces the estate tax in large estates or increases the basis of assets passed to heirs in small estates. The inventory and valuations will likely be reviewed by both the attorney as well as the court. The values are usually of vital interest to the beneficiaries.

Keep Accurate Records:

The personal representative or trustee is required to keep accurate records of all estate income and expenses. They should open an estate checking account or continue to use the checking account of the deceased. **Under no circumstances** should the personal representative mix personal funds with estate funds, nor should they pay any bills in cash. Keep all checks and receipts for any payments made. The most efficient way to do all this is to establish a good record keeping system. It is also important to keep the beneficiaries informed on a regular basis, as to what is happening with estate assets, projected distribution dates, and any other details they may be interested in.

Payment of Claims and Bills:

The personal representative or trustee is charged with paying all lawful claims of creditors and paying the bills of the deceased. These bills include medical expenses, funeral, utilities, and other outstanding business and personal bills. Keep receipts.

Life Insurance:

Life insurance policies should be located. Companies should be informed of the death and forms should be filed to initiate payments to beneficiaries.

Tax Implications:

Throughout the settlement process, the personal representative or trustee should pay attention to income tax and estate tax possibilities. The attorney or an accountant should be able to give advice on this matter. Perhaps the least understood area of taxation involves the establishment of basis in assets. Basis is the decedent's value in the asset as of the time they acquired it - purchase, gift or inheritance. Basis is the tax cost or expense you deduct when the asset is sold. Heirs get a stepped up basis to fair market value on assets they inherit. It is important that the personal representative or trustee informs them of this basis at the time of asset distribution. Likewise, if the deceased was collecting payments on an installment sale, a certain percentage of the principal is subject to taxation. It is determined by the profit percentage calculated on the sale and used annually to determine taxable income. Since the heirs must continue to pay income tax on the installment contract income, they should be informed of the profit percentage. Heirs will also have to pay income tax on the interest received from installment contracts. Heirs should be informed of any other tax ramifications.

MN requires the value of any gifts given within 3 years of the decedent's death to be added back into the decedent's estate value to determine if any MN

estate tax is due. This also applies to non-MN residents who own real estate or tangible personal property in MN. Finding documentation of any gifts would be necessary in closing a decedent's estate.

Convert Assets to Cash:

Unless the Will or trust advises or stipulates to the contrary, assets are usually sold for cash so that a later cash distribution can be made to beneficiaries. The car, the house, other real estate, mutual funds, etc. are usually sold and receipts deposited in the checking account. If the Will or trust calls for direct distribution of assets to certain heirs, assets would be held until the date of distribution. One exception is if the decedent has a retirement investment account. If allowable, heirs may want to roll the investment into their name and allow it to continue to be invested and to grow in value. Seek the help of a qualified financial planner in this matter.

Distribution of Assets:

One of the final steps is to distribute all assets to the rightful heirs according to the Will, trust agreement, or state intestate laws. If a Will exists, the court must supervise all distribution of assets. If a trust exists, the trustee(s) can distribute the assets according to the trust document. Legal transfer is made of non-cash items and checks are written to heirs. A prudent personal representative or trustee might retain some funds in the checking account if future tax bills are a possibility. If tax contingencies never arise, a later distribution to heirs closes out the estate checking account.

File Tax Returns:

The personal representative or trustee will have to file income tax and estate tax returns on behalf of the decedent. Verify due dates of such returns early in the process so deadlines for filing can be met.

There are many other details, which must be attended to during the settlement period. They may include newspaper notifications, formal appointment of the personal representative or trustee, notification of heirs, determination and payment of personal representative or trustee fees, closing of all accounts, and formal closing of the estate. The attorney will advise the family or personal representative/trustee as to these details as the process proceeds.

Caution: This publication is offered as educational information. It does not offer legal advice. If you have questions on this information, contact an attorney.