



Your Complete Guide to Serving **as the Executor of an Estate**



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Introduction

If you've been asked to act as the executor of a friend or loved one's estate, you probably feel a complicated mix of emotions. You're honored to be asked, of course, but the idea of serving as an executor is accompanied by a sense of anxiety. What exactly will you have to do? How much time will your duties take? How do you get help carrying out this vitally important role?

If you're feeling overwhelmed, that's understandable. It's not a job for the faint of heart. That said, it's not an insurmountable task. With help from this guide, you'll learn what's expected from an executor, including responsibilities such as gathering the estate's information, paying lingering debts and new expenses related to managing the estate, handling taxes affiliated with the estate, and distributing the estate's assets per the wishes of the deceased.

Sound intimidating? That's okay. This isn't a do-it-yourself guide to serving as an executor. Instead, it offers guidance to help you discern which jobs you can accomplish on your own and which ones you should probably seek help from an attorney or accountant to complete. You'll walk in with the knowledge required to be an informed client.



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WHAT IS PROBATE?

While most people are familiar with the word, they might not know what probate actually entails. Basically, probate is the series of legal procedures used to ensure that all debts, taxes, and expenses of the deceased are paid in full and any remaining assets are properly distributed to the remaining heirs.

It's our goal to walk you through the probate process, giving you an overview of what you might expect as you serve as the executor of your friend or loved one's estate during probate. Granted, not every estate is required to go through probate— and some that do are able to undergo an expedited probate procedure. (We'll help you determine if you can avoid probate altogether later in this guide.)

Here's the good news: help is available. Better news? You can charge the fees associated with this assistance to the estate. In other words, you won't have to spend your own money out of pocket to ensure that your friend or loved one's estate is handled properly. The size and complexity of the estate will determine how much help you'll probably require, but the bottom line is you shouldn't be afraid to reach out to an experienced law firm to get the help you need.

In addition to billing the estate for the fees related to consulting with professionals, you can also receive a fee for your own services. In Ohio, the amount you're eligible to receive is a percentage of the estate that's dependent on the estate's value as well as whether the executor has to sell the assets or pass them along to the decedent's beneficiaries.

The size and complexity of the estate will determine how much help you'll probably require, but the bottom line is you shouldn't be afraid to reach out to an experienced law firm to get the help you need.



HOW TO PREPARE TO BE AN EXECUTOR OR TRUSTEE

You've been named as the executor of a friend or family member's will. Now what? If that person, known as the testator, is still living, it's a good idea to sit down with them and discuss the will in general. They might not feel comfortable sharing the details— and that's perfectly fine— but there is some information that you must have to do your job well.

- **Where's the will?**— While the testator might be reluctant to give you all the in-depth details about who gets what, they should share with you the location of the original copy of the will and how to retrieve it when the time comes.

Ideally, you'll get a copy to be opened in the event of the testator's death, but the testator might also leave a copy for you at their attorney's office or in a safety deposit box. If the latter is where they left the will, it's vital that you get the name of the bank as well as the location of the key to the safety deposit box. The testator could also have their will filed in their home office or in the Surrogate Court of their county.

You'll also want to know where any family members or friends who could be beneficiaries are located; when the time comes to read the will, you'll need to track these people around

- **Is there a letter of instruction?**— As the executor, you'll be required to gather together the estate's assets. The best way to ensure that you don't miss anything is for the testator to write a letter of instruction. This letter should be placed in an easily accessible place; this will allow them to update the letter as needed, and make it simple for you to find it when the time comes. This letter should include:
 - **Names** and phone numbers of family, friends, business associates, and professionals with whom the testator worked to manage assets as well as their preferred funeral director and clergyman.
 - **Location** of documents, such as birth and marriage certificates, will, social security number and cards, medical and health records, and financial records
- **Are there any specific requests for the funeral?**— Many people have distinct preferences for how their funeral should be handled. Do they want to be cremated or do they prefer a traditional burial? Do they have a clergyperson that they want to conduct the service? Do they even want a service?



WHAT ARE YOUR FIRST STEPS?

It's tough to lose a friend or loved one, but when you're forced to handle the duties of an executor, you've got duties to handle beyond processing your own grief.

Track Expenses

As the executor, it's not necessarily your responsibility to make the funeral arrangements; that's typically handled by the spouse, children, or family members of the deceased. That said, you will be responsible for keeping a close eye on the expenses related to the funeral; you'll be responsible for paying the bills using the estate's assets. If, say, the deceased's child pays the funeral director, they can be reimbursed from the estate.

Any expense that's related to the funeral service— including the meal for family and friends after the service— is eligible for reimbursement. These expenses are prioritized above any other obligations per federal law.



Order Death Certificates

As the funeral arrangements are being made, be sure to order several copies of the death certificate from the funeral director or from your local health department. You'll need them to:

- **Transfer**
 - Real estate
 - Vehicles
 - Bank accounts
 - Stock certificate
- **Cash in insurance policies and death benefits**
- **Get access to safe deposit boxes**
- **Complete tax returns**
- **And more**

Obtain Guardians for Minor Children

If the children of the deceased still have a living parent, the court will almost always grant them custody, unless that parent declines to act or is shown to be unfit. Otherwise, the nomination of guardian(s) in the will are generally respected by the court.

Petition to be Personal Representative

Just because your friend or relative chose you to be the executor of their estate doesn't mean that you're recognized as the executor in the eyes of the state. In Ohio, you are required to file a petition for probate— this process ensures that you're officially appointed the estate's executor, which will help you get the Letters of Authority that are required to act on behalf of the estate.

Provided all goes to plan, you'll receive the Letters Testamentary that will give you the legal authority you need to carry out the deceased's business affairs per their instructions. That said, you must recognize that you have a duty to bring to their affairs the respect and care that the deceased would have. On average, this takes anywhere from six to eighteen months— in other words, this is a big commitment.

It's your basic function to gather all assets and liquidate and distribute them as quickly as possible. If you're found to be negligent in your duties and you fail to do so, you could be held liable. Additionally, if you hold on to cash without putting it into an interest-bearing account, you could risk liability. If you don't keep a careful eye on the deceased's investments, you might be held liable. (It's just good sense to consult an experienced investment advisor as well as the beneficiaries early in the process.)



What does your estate plan need?

Use our free app to find out. Answer a few questions and our app can tell you if you need a living trust or if a final will and testament will suffice.

FIND OUT NOW

You're also responsible for preparing and filing taxes for the individual as well as the estate, and you could be held liable if you don't do this in a timely manner— within nine months of the date of death.

Alert the IRS

Regardless of whether the estate will need to go through probate, there are tax forms that will need to be completed. When you become the estate's executor, you should notify the IRS of your capacity to act for the estate via Form 56, the Notice Concerning Fiduciary Relationship. This isn't required, but it will make your life a lot easier as the IRS will send notices to your address rather than that of the deceased.

You'll also need to acquire a federal tax identification number for the estate; simply file IRS Form SS-4, Application for Employer Identification Number. You can complete this online (www.irs.gov) or by mail. You should receive the number within a few weeks. In court for months, leaving your loved ones high and dry as they attempt to pay for medical or funeral expenses.

To determine which of these elements should be considered as you create your estate plan, it's smart to consult an experienced attorney. But how do you decide which attorney is best for you?



WHAT ABOUT THE WILL?

Ideally, your friend or loved one will have left you specific instructions about where to find the original copy of their will (and they will actually have MADE a will). If they didn't, take a quick look through their personal papers in their home office to see if it's there. If it's not, check with their attorney.

Often, the attorney who prepared the will retains the original copy; if that's the case, you might find that they're reluctant to hand it over to a layman. However, they are required by law to file the will with the probate court and send the executor (you) a copy of the will, so you'll get it eventually.

If you've ever seen a will reading on television or in the movies, you probably assume you've got to gather all the deceased's family and friends together for a (possibly dramatic) reading of the will. That's not necessarily the case. While it might be nice to bring the immediate family together to read it, you can also read the will privately and send a copy or a summary of the relevant provisions to the people mentioned within. No ceremony is required.



WHAT IF THERE ISN'T A WILL?

You've looked among the deceased's personal papers and checked with their attorney, but you still can't find a will. Now what?

When a person dies intestate, or without a will, dividing their estate becomes far more complicated. If the deceased is married at the time of their death and they share their children with their current spouse, that spouse will inherit all of the estate. If all the deceased's children are from a previous relationship, the surviving spouse will receive a family allowance (\$40,000), the first \$20,000 of the remaining estate, and up to half of the balance, depending on the number of children.

If the deceased is unmarried and has no children, the estate goes to their parents. If the parents are no longer alive, it's split among the deceased's siblings. No siblings? The state of Ohio will search for lineal descendants of the deceased's grandparents. If there are no living relatives to be found, the estate will become the property of the state of Ohio.

An experienced estate attorney can help you with next steps if you discover that the estate that you're tasked with does not have a will.



HOW DO YOU LOCATE, SORT, AND EVALUATE ASSETS?

The primary factor in determining whether the estate will need to go through probate is the estate's worth. This will require you to identify and evaluate the deceased's assets. You'll need to systematically go through everything that your friend or loved one owned at the time of their death.

This might feel like a big job— and it is. But there are several reasons why you'll need to tackle the task. For one, the number and type of assets that you find will decide whether and what type of probate procedures will be necessary. Additionally, per Ohio law, an inventory of the deceased's assets must be filed no later than three months after the executor is appointed. You'll also need a complete listing of the assets for the purposes of estate taxes. And finally, the assets can't be properly distributed to the estate's beneficiaries until their nature and value are known.

Locate the Assets

If the estate is very complicated, the deceased might have named a corporate or professional co-executor, like an attorney or a bank. This will significantly decrease your duties, but you will need to locate and provide records to the co-executor.

In most cases, you'll be doing the assessment on your own. You'll need to be prepared to search every room, every closet, drawer, and hiding spot you can find as you search for any and all valuable assets. If you're lucky, the deceased will have left you an updated Letter of Instruction— but you'll still need to do a thorough search to ensure that nothing was forgotten.

One of the best places to start is with the deceased's previous year's tax return. You'll get a list of any income-producing assets and, typically, any other records related to valuable assets are usually kept in the same place as the tax information.

Another place to check is the deceased's checkbook as well as their file of cancelled checks. This will lead you to any payments made toward:

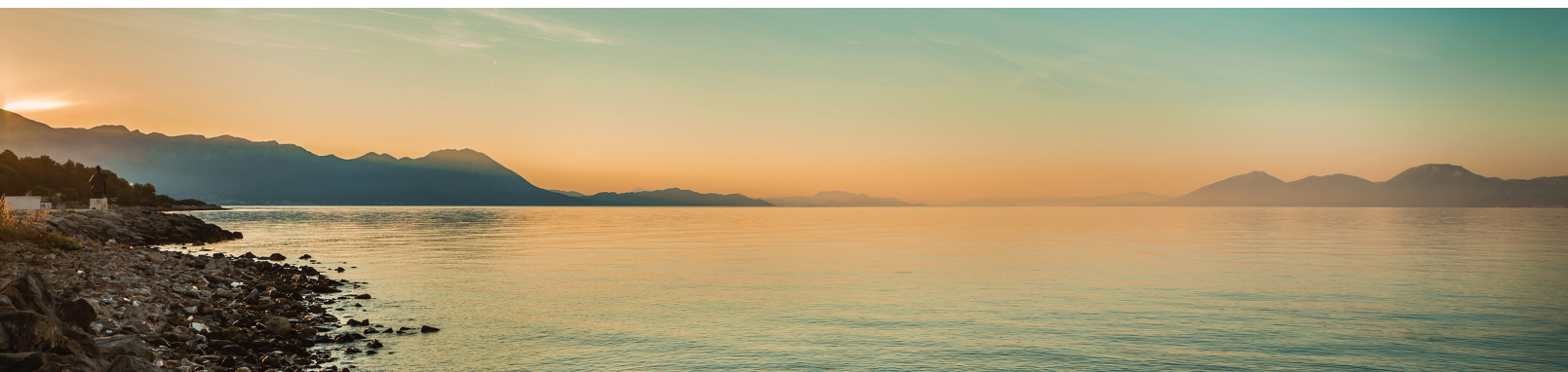
- **investments**
- **insurance, debts**
- **mortgages**
- **medical expenses**
- **vehicle registration**
- **gifts to family**
- **safety deposit box rental**

It's a good idea to keep an eye on the deceased's mail for at least six months after their death; watch for dividends, pensions, and any payments made to the deceased. You'll also get clues to the deceased's assets and liabilities— some of these are sent on a quarterly, semi-annual, or annual basis. For your convenience, present your Letters Testamentary to the postmaster along with your identification; they'll likely have the deceased's mail forwarded to you.

Preserve the Assets

The last thing you want is for your friend or loved one's assets to deteriorate. After all, they entrusted you with the task of ensuring that their possessions and assets are safely delivered to their beneficiaries.

Unfortunately, this process takes time. Until the assets are distributed, it's up to you to preserve them. For instance, if their residence is unoccupied, it's up to you to ensure that it's locked up and properly cared for. Any vehicles should be secured and kept in good running condition. Any valuables, such as jewelry or securities, should be kept somewhere safe. (You might consider renting a safe deposit box in the name of the Estate.) If the deceased owned a business, you must decide whether to make arrangements to keep the business running for the time being or if you need to close it.



Here are just a few actions you might need to take:

- **Keep insurance payments on vehicles and real estate current**
- **Make mortgage payments**
- **Make utility payments as required to avoid deterioration**
- **File claims for Medicare, medical insurance, or casualty insurance benefits**
- **Return charge cards for refunds of annual fees**
- **Cash in unused airline tickets**
- **Cancel club memberships and magazine subscriptions**
- **Cancel margin accounts or standing orders to buy or sell stocks or commodities**
- **Classify and Value Assets**

While each of the assets might have been considered priceless by the deceased, the valuation of the assets is dictated by the Internal Revenue Code under rules applicable to the federal estate tax if it's determined to be due. Basically, the value of the taxable estate has to be determined before you can tell if it's large enough to require filing an estate tax form. If the estate is valued at \$1 million or more, an estate tax return is required to be filed nine months from the date of death, even if no tax is owed.

Any property owned by the deceased anywhere in the world— even if they only own a small part— should be counted. The property's value is determined as of the date of death, though you might use the date six months after the date of death or the date of sale of property sold within six months if it's more beneficial for reducing taxes.

Property owned jointly with a spouse or any other living person isn't included in the decedent's probate estate, but it must be listed on the estate tax return. As a general rule, the value of the entire property will be included in the taxable estate of the first joint tenant to die, unless it can be proven that the other joint tenant(s) contributed to the cost of acquiring the property. If this can be shown, then the percentage of the decedent's contribution to the total acquisition costs is the percentage of the property's fair market value at death included in the decedent's taxable estate.

When the other joint owner is the deceased's spouse, half the property's value at death is considered to be part of the taxable estate of the first spouse to die, no matter how much each spouse contributed to the acquisition costs.

As a general rule, the value of the entire property will be included in the taxable estate of the first joint tenant to die, unless it can be proven that the other joint tenant(s) contributed to the cost of acquiring the property.

Rules for Specific Types of Assets

Here are some of the most common types of assets and how to evaluate them.

Tangible Personal Property

Every estate, regardless of size and complexity, has tangible personal property. This can range from simple furniture, clothing and memorabilia to major appliances, motor vehicles, and farm machinery to expensive jewelry and antiques.

The value of the property is the price that a willing buyer will pay a willing seller. If there is property that is not sellable— like, for instance, well-worn clothing- you don't need to list it in the inventory.

All items that can be realistically sold for more than a “rummage sale” price should be listed. Items valued at less than \$100 can be grouped. For example, a dining room table must be listed as a single item; costume jewelry valued at \$50 for ten pieces can be listed as “Costume jewelry” rather than specifying each piece.

Assets with an intrinsic value, such as jewelry, furs, silverware, or art, should be appraised by an expert. In fact, an expert is required by the IRS if one article is valued at more than \$3,000, or any collection of items is more than \$10,000.



Cash and Bank Accounts

In addition to the face value of any cash, whether it's deposited in checking, savings, or money market accounts or simply in the deceased's possession at the time of death, any interest accrued up to the date of death is included in the amount. Outstanding checks at the time of death will be subtracted from the total if they're honored and charged against the account.

Real Estate

When your friend or loved one owns real estate, whether it's a personal residence or a commercial residence, farmland or a vacation home, it's best to have it professionally appraised to determine the value. If the real estate is located in a different state, you might be required to employ an attorney in that state to undergo supplementary probate proceedings.

Stocks and Bonds

Determining the value of publicly traded stocks, bonds, and mutual funds is as simple as consulting a newspaper like The Wall Street Journal or The New York Times on the date of your friend or loved one's death. If the deceased was enrolled in a dividend investment program, contact the administrator of the program to determine find out exactly what the deceased owned at the date of their death.

If the deceased owned a large block of stock in a single company or shares of a privately traded or closely held stock, an expert might need to step in to make the appraisal.

Loans, Notes, and Mortgages

The value of any loans, promissory notes, and mortgages that are held by your friend or loved one is simply the amount of unpaid principal and the accrued interest. If a note is forgiven in the deceased's will, it is still included in the gross estate.

Life Insurance

Ideally, as the executor of the estate, you should be apprised of every life insurance on the deceased's life, whether it's subject to estate tax or is a part of the probate estate. Do you suspect that your friend or loved one has a policy, but are unable to find any evidence of it? You can contact a fee-based service that will search industry databases for the existence of a policy.

If the deceased owned a large block of stock in a single company or shares of a privately traded or closely held stock, an expert might need to step in to make the appraisal

As you inventory policies, you must include:

- **Name of insurance company**
- **Name of beneficiary**
- **Face amount of the policy**
- **Policy number**
- **Amount of outstanding loans against the policy**
- **Interest on any loans**
- **Amount of accumulated dividends on the policy**

The policy's value is the net proceeds received if paid in a lump sum. If they're not paid in a lump sum, the value is the value of the future proceeds as of the date of death. The life insurance company can give you this value. The company can complete an IRS Form 712 and return it to you.

In general, life insurance policy proceeds are taxable for the estate tax purposes if the proceeds are payable to the estate or the proceeds are payable to a name beneficiary but the insured had one or more “incidents of ownership” in the policy.

An “incident of “ownership” includes the power to:

- **Change the beneficiary**
- **Surrender or cancel the policy**
- **Assign the policy**
- **Revoke an assignment**
- **Pledge the policy for a loan**
- **Borrow against the cash value**

Annuities

While annuities aren’t usually included in the probate estate, they should be included in the inventory, as they are taxable for estate tax purposes. You can include all or a portion of the lump-sum, annuity, or other payment received by a survivor by reason of the death of the deceased.

The term “ annuity” covers a very broad range of contracts or agreements; it includes private annuities purchase by the deceased as well as many types of employer-provided deferred compensation plans. Complex rules apply to the valuation of annuities, so you will probably need to contact the organization making the payments as well as an experienced tax professional if your friend or loved one’s estate includes this type of asset.



HOW DO YOU PAY CLAIMS AND EXPENSES?

As you inventory assets, it's important that you take note of the estate's liabilities. These bills might include mortgage payments, credit card statements, utilities, outstanding loans, medical bills, and any expenses incurred after the date of death, such as funeral expenses, attorney fees, and even your own executor's fee. You'll also need to eventually pay taxes, both individual income tax and estate tax.

Establish a Checking Account

A basic, no-frills checking account will suffice; remember, you're just parking these funds during a short period of administration. Open the account under a name like, "Estate of James Alan Johnson, Deceased, John Quincy Doe, Executor." The bank will advise you on the format that it requires. In the name of expediency, you'll most likely need to open the account using your personal funds, which you can later recover from the estate.

Pay Bills as Needed

Your first instinct might be to pay the bills for the estate as soon as they arrive. However, you might want to postpone payment until you have a full grasp on the estate's assets. After all, you want to be sure that you have ample funds to make the payment. Some debt might be covered by insurance; before you make a payment, ensure, for example, that their life insurance won't cancel out unpaid balances on credit cards or credit union loans or whether mortgage insurance will cancel the unpaid balance on the mortgage.

Do not feel compelled to pay bills out of your personal account; if the assets are insufficient to cover the deceased's debts, some creditors will not be entitled to full payment. If the estate is small, you might not be required to wipe it out to pay creditors. Some states allow a "family allowance" that is exempt from the claims of creditors.

That said, it is important to make timely payments on any item that is required to preserve the probate assets; this includes insurance coverage as well as the mortgage and utility payments. You might talk to an experienced probate attorney to determine what you should pay when.





HOW DO YOU KNOW IF PROBATE IS NECESSARY?

When you created the inventory list, you included any asset that could be subject to federal and state estate tax. If the total value of the taxable estate amounts to \$3.5 million or more, you must file a federal estate tax return. The size of the taxable estate doesn't necessarily determine whether probate is necessary; you'll need to classify assets as "Probate" or "Nonprobate" property before you know what will be required.

Should any checks payable to the deceased arrive, you should deposit them here. You can endorse them as the executor. Additionally, when you liquidate assets, the funds should be put directly into this account. When you pay any debts related to the estate, use a check from this account. It's vital that you maintain careful records about what goes into the account as well as what goes out.

Categorize the Assets

“Nonprobate” assets are those that pass to survivors independently of the will. Any claims for the debts and expenses cannot be applied to these assets, though they could be subject to certain death taxes. They don’t need to be reported to probate court and you, the executor, are responsible for administering them. If the whole estate consists of nonprobate assets and there are no minor orphans to consider, probate isn’t required. You can simply distribute the assets as instructed. This is faster and results in significant financial savings.

The most common nonprobate assets include:

- **Joint tenancy property**
- **Life insurance benefits**
- **Annuities**
- **Pensions**
- **IRA and Keogh Accounts with named beneficiaries**
- **Totten (bank account) trusts**
- **Revocable living trusts**

After you set aside any nonprobate assets, add up the value of probate assets. The total value of probate assets and the relationship of the surviving beneficiaries to the deceased will determine the type of probate procedures that are available to the estate.



What are the Types of Probate Procedures?

Probate procedures vary from state to state, even from county to county. Most states permit more than one kind of procedure, but not all states permit each of the probate procedures described below.

Full Probate Administration

If none of the other types of probate proceedings are appropriate, an estate will be required to undergo full administration. The first step is to probate the will, provided there is a will, and then apply to appoint the fiduciary; this must happen as soon as possible. After that happens, assets may be gathered and all the required appraisals are quickly obtained by the estate's executor. When the assets are gathered and value determined, file with the probate court the complete inventory of assets.

Any debts, taxes, or creditors must be paid from the estate's assets, and the remainder will be distributed to the estate's beneficiaries. Should these beneficiaries receive any of the assets prior to the end of the six month period allotted to creditors to file claims, the executor should obtain an acknowledgement (signed) from the beneficiaries stating that they understand that they are liable for any future estate debts— up to the amount of assets that they received. When everything is distributed, the executor will file the last accounts and the probate court will consider the case closed.



Release from Administration

Estates that reach Ohio’s monetary limit are eligible for release from administration. Should the surviving spouse receive all of the deceased’s estate as a beneficiary of the will or due to their standing under the law, and the spouse receives under \$100,000, the estate qualifies for release from administration.

If a beneficiary other than the spouse receives assets that are under \$35,000, the estate will qualify from administration.

Summary Release From Administration

In the state of Ohio, the person who has paid for the deceased’s funeral when they are not the deceased’s spouse may apply for an order granting summary release from administration if the value of the estate’s assets don’t exceed either \$5000 or the cost of the funeral and burial expenses— whichever is less.

Should there be a surviving spouse who is entitled to the estate’s assets, and the total amount of the assets are under \$40,000, they can be transferred to the spouse by a summary administration.

Real Estate Only

Should the deceased die owning an interest in real estate and the transfer of the real estate is based on the will or select statutes in Ohio's law, and if the date of death was longer than six months earlier and no creditors have filed outstanding claims against the estate, you may file for a Real Estate Only administration.

Will For Record Only

In the event that there are no assets to be probated, the will still must be presented to probate court. The will must be presented as soon as possible following the date of death, and if the will is withheld, whether it's intentionally, due to negligence, or without cause, the person who withheld it can forfeit the right to inherit.

In the state of Ohio, the person who has paid for the deceased's funeral when they are not the deceased's spouse may apply for an order granting summary release from administration if the value of the estate's assets don't exceed either \$5000 or the cost of the funeral and burial expenses— whichever is less.



HOW DO YOU CLAIM LIFE INSURANCE, SOCIAL SECURITY, AND OTHER BENEFITS?

If you are both executor and a beneficiary to estate, you may be wondering how you go about collecting the benefits after you've accounted for them while making your inventory of assets.

Life Insurance

This is a lifesaver for many survivors, and as such is considered a nonprobate asset as long as the beneficiary is anyone other than the estate. Fortunately, you'll have the information you collected for the inventory; you'll need all of it, from the type of policy to the credit extended. You'll require a copy of the death certificate and you'll need to fill out the agency's claim form as well; if multiple adults are beneficiaries, each will need to submit a claim form. We recommend making a copy of the claim form prior to sending it to prevent any hiccups along the way.

Social Security

To get the one-time death benefit, the spouse or dependent children of the deceased must visit their local Social Security office to claim it. There, the staff will walk you through paperwork and tell you the documents (again, you'll need a copy of the death certificate) that you'll need to get the payment.

If you are seeking monthly survivors benefits, the process is more complex. Contact the Social Security office to learn more if you are:

- **A surviving spouse who is**
- **Caring for the deceased's child who is disabled or under the age of 16**
- **60 or older**
- **50 or over and becomes disabled up to seven years of the worker's death**
- **or fewer than seven years after a parent's benefits end**
- **A former spouse**
- **Unmarried child**
- **Dependent parents**
- **Annuities**

Again, you should have the information required to track down the annuity benefits thanks to your inventory of assets. In addition to information about the type of life annuities and names of beneficiaries, you'll need a copy of the death certificate and a completed claim form to get the benefits.



HOW DO YOU COMPUTE AND FILE TAXES?

As the executor of the estate, you're responsible for filing the federal, state, and local income tax return that your friend or loved one would have been responsible for filing as well as any federal or state tax returns required by the estate.

There are three possible taxpayers:

- **The estate**— It might be responsible for federal income tax, estate tax, and generation-skipping tax.
- **The deceased**— Your friend or loved one is responsible for any income tax that might have accrued for the portion of the year before their death.
- **The beneficiaries**— Depending on the amount of income they receive from the estate's assets, the beneficiaries might have to pay income tax

It's your responsibility as executor to ensure that you consider the tax implications of every decision you make. Ideally, your choices will minimize the tax burden on all three prospective taxpayers. This is a big burden; getting help from an experienced probate attorney as well as a tax professional well-versed in estate tax is wise.

Final Individual Income Tax Return

The only way that you would be exempt from filing a federal individual income tax return for the deceased is if they didn't earn sufficient income in the final calendar year to be required to file.

On the final income tax return, you report only income that the deceased received (for cash basis taxpayers) or accrued (for accrual-basis taxpayers) up to the date of death. Any income received or accrued after that date is typically reportable on the estate income tax return, which we'll get into later. If the decedent receives any year-end 1099 forms from banks, savings and loans, or other financial institutions reporting interest or dividends earned both before and after death, the institution should be notified of the death so they can correct their records, and special care should be taken to correctly allocate the amounts between the final individual return and the estate income tax return.

If the deceased is survived by a spouse, and that spouse does not remarry prior to the end of the year, the deceased's final return can be in the form of a joint return with the surviving spouse. The income reported is that of decedent for the portion of the year he or she was alive, and that of the spouse for the entire calendar year. A full personal exemption can be claimed for the deceased even if his or her income was less than the minimum filing amount. Filing a joint return usually results in significantly lower overall taxes, but this election must be agreed to by both the surviving spouse and the personal representative. Otherwise, both the survivor and the decedent will have to file as "married filing separately."

Estate Income Tax Return

The estate of the deceased is a taxable entity separate from the deceased. It comes into being upon the death, and generally continues to exist until the final distribution of the estate's assets to the heirs and other beneficiaries. The income earned by estate assets during the period of administration is subject to income tax.

Like other taxpayers, the estate is required to report its income annually. If the estate has gross income of \$600 or more in a taxable year, the executor must file a federal Fiduciary Income Tax Return (Form 1041) for that year. The executor may choose to report estate income on a calendar or a fiscal year basis. The tax year selected begins on the date of death and ends no later than December 31, but the executor can select a fiscal year ending on the last day of any earlier month. Thus, the executor can spread the estate income over a longer period and reduce taxes by choosing a fiscal year end that results in a very short first tax year, a 12-month second tax year, and possibly a third tax year that is also short. If the estate is not closed within two years of the death, you will have to make quarterly estimated tax payments.



In determining what income is taxable to the estate and what is taxable to the beneficiaries, the general rule is that income that is retained by the estate during the tax year is taxed to the estate, but income distributed to the beneficiary of an estate will be taxed to the beneficiary. While the estate would pay a higher marginal tax rate than a beneficiary, it may be advantageous to distribute the income to the beneficiary as soon as possible. The beneficiary will then be required to report the income on his or her individual income tax return.

When estate assets must be sold to pay taxes or claims or to effect a distribution, any gain or loss on the property must be reported on the estate income tax form. The basis or starting point for computing gain or loss is the asset's value at the time of death, not the price the decedent originally paid for it.

Estate income is not the only item that can "pass through" to the beneficiaries. If, in the final year of its existence, the estate has deductible expenses that exceed its income, the "excess deduction" may be claimed by the beneficiaries on their individual income tax returns. Expenses of administration, such as the executor's commission, attorney fees, and appraisal expenses, generally will be the most significant type of excess deductions. Because of the availability of these deductions to beneficiaries, estates with income of less than \$600 may file an estate income tax form even though not required by law.

Estate Tax Deductions

Available deductions against the gross estate are:

- **Administration and funeral expenses**
- **Claims against the estate**
- **Outstanding mortgages and debts**
- **Casualty and theft losses**
- **Charitable deduction**
- **Marital deduction.**

When you deduct funeral expenses, it ordinarily includes all amounts actually expended, provided the amounts were billed within nine months of death and are deductible from the estate under state law.

Administration expenses consist of attorney fees, including contingent fees for wrongful death lawsuits, the executor's fee; accountant's fees; and any other expenses incurred in the collection of assets, payment of debts, and distribution to beneficiaries, such as court costs, appraiser's fees, secretarial help, cost of maintaining, storing, or preserving estate property, and costs of selling property if necessary to pay debts, expenses, or taxes, or to carry out the will.

Legally, enforceable debts and mortgages that date from before the death are deductible, even if they were not billed before the death (e.g., medical expenses, recent charge card purchases). Mortgages on specific property are deductible to the extent that the value of the property was included in the gross estate, so 50% of the mortgage on spousal joint tenancy property is ordinarily deductible.

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Losses resulting from theft, fire, storm, shipwreck, and war are deductible to the extent they are not compensated for by insurance.

An unlimited deduction is allowed for the amount of property transferred to any organization operated exclusively for charitable, religious, educational, scientific, or literary purposes, as well as to veterans organizations, or to the United States or any political subdivision for exclusively public purposes. Gifts to needy individuals or to organizations that participate or intervene in political campaigns are not deductible.

Finally, if the deceased was married at the time of death, an unlimited marital deduction applies to any property transferred to his or her surviving spouse. With certain exceptions, the deduction does not apply when the gift is of a life estate or other interest that is classified as “terminable,” the rationale being that the marital deduction property must eventually be includible in the surviving spouse’s estate.

Estate Tax Credits

Once all available deductions are computed and subtracted from the gross estate, a tentative estate tax can be computed using the tax tables pertaining to Form 706. Then, a second set of subtractions is made, for any available tax credits that apply. The most important of these is the applicable exclusion amount is allowed to every decedent. The credit is the equivalent of exempting the first \$3.5 million in the estate from tax; as a result, very few decedents actually end up owing any federal estate tax.

A credit for tax on prior transfers is allowed when the decedent inherited property from someone else who died less than 10 years earlier, if the property was already taxed in the first deceased's estate. The credit is equal to 100% of the prior tax if the deceased parties died within two years of each other, 80% if the second died within four years of the first, 60% if within six years, 40% if within eight years, and 20% if within 10 years.

Other credits exist for state death taxes paid, for foreign death taxes paid on property located in foreign countries, and for prior federal gift taxes.



Final Advice

Being named an executor to a friend or family member's estate is an honor, but it's an incredibly complex challenge. If you feel that you need a guiding hand throughout the months that it typically takes to shepherd an estate through probate, it's wise to contact an attorney with years of probate experience.

You don't have to take on this burden alone. Get the advice you need to ensure that you're making the best decisions for all parties involved. At Port Legal, we've helped many people navigate the challenges related to serving as an executor to an estate. If you have questions, we have answers. **Contact us** today.

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