

STEPS TO BE TAKEN WHEN A LOVED ONE DIES

By: Douglas A. Fendrick, Esquire

*Law Offices of Douglas A. Fendrick, LLC * 1307 White Horse Road, Building B
Voorhees, NJ 08043 * Phone: 856/489-8388 * Fax: 856/489-8424*

The emotional trauma brought on by the death of a close family member is often accompanied by bewilderment about the financial and legal steps the survivors must take. The spouse who passed away may have handled all of the couple's finances. Or perhaps a child must begin taking care of probating an estate about which he or she knows little. This task may come on top of commitments to family and work that can't be set aside. Finally, the estate itself may be in disarray or scattered among many accounts.

In this article, I have set out the steps the surviving family member should take. These responsibilities ultimately fall on whoever was appointed Executor in the deceased family member's Will. Matters can be a bit more complicated in the absence of a Will, because it may not be clear who has the responsibility of carrying out these steps.

If you are listed as an Executor of an estate then you should meet with an estate planning attorney to review the steps necessary to administer the decedent's estate. Gather as much information as possible about the decedent's finances, taxes and debts and bring it with you to the initial appointment. The exact rules of estate administration differ from state to state. In New Jersey, they include the following steps:

a) Probating the Will at the Surrogate's office in order to be appointed Executor. In the absence of a Will, heirs must petition the Probate Court to be appointed "Administrator" of the estate. Probate is the process by which the decedent's property, known as the "estate" is passed to his or her heirs and legatees (people named in the Will).

b) Secure the tangible property. This means anything you can touch, such as silverware, dishes, furniture or art work. You will need to determine accurate values for each piece of property, which may require appraisals, and then distribute the property as the decedent directed. If property is passed around to family members before you have the opportunity to take an inventory, this will become a difficult, if not impossible, task.

c) Marshalling, or collecting, the assets. This means that you have to find out everything the decedent owned. You need to compile a list. It is generally best to consolidate all of the estate funds to the fullest extent possible. Bills and bequests should be paid from a single checking account, either one you establish, or one set up by your attorney, so that you can keep track of all expenditures.

d) Paying bills and taxes. In New Jersey, if an estate exceeds \$675,000 in value, a New Jersey estate tax return is usually required and if the

estate exceeds \$1,500,000, a Federal estate tax return must be filed. The returns must be filed within nine months from the date of death. If you miss this deadline and the estate is taxable, severe penalties and interest may apply. If you do not have all of the information available in time, you can file for an extension and pay the best estimate of the tax due. New Jersey also has an inheritance tax which is due eight months after the decedent's death.

e) Filing tax returns. You must also file a final income tax return for the decedent. In addition, if the estate holds any assets and earns interest or dividends, an income tax return for the estate must be filed. If the estate does earn income during the administration process, it will have to obtain its own tax identification number in order to keep track of such earnings.

f) Distributing property to the heirs and legatees. Generally, Executors do not pay out all of the estate assets until the period runs out for creditors to make claims. But once the Executor understands the estate and the likely claims, he or she can distribute most of the assets, retaining a reserve for unanticipated claims and the cost of closing out the estate.

g) Filing an informal accounting. The Executor usually files an informal accounting with the beneficiaries of the estate which lists any income earned by the estate and all expenses and estate distributions. If the beneficiaries approve this accounting, then they execute Release and Refunding Bonds. By executing the Release and Refunding Bonds, the beneficiaries agree to release the Executor from his or her handling of the estate and agree to refund the Executor for any unforeseen expenses of the estate.

You can make the estate administration process easier for your heirs by keeping good records of your assets and liabilities. This will shorten the process and reduce your legal expenses. Furthermore, you should instruct your family members to seek out the advice of a competent estate planning attorney.