

LAKEVIEW TRUST & ESTATE LAW, PLLC
GUIDE FOR PERSONAL REPRESENTATIVES

You have now been appointed as the personal representative in the Estate of _____.
This guide is designed to provide you with basic information to assist in the efficient administration of the estate.

What is an estate?

The estate consists of all property a decedent owns only in his or her name at the time of death. The estate does not include nonprobate property, such as: (1) property which the decedent held jointly with another person(s), including bank accounts or real estate held in joint tenancy with right of survivorship; (2) property with a beneficiary designation, such as insurance or IRAs; (3) property which has a "payable on death" (POD) designation; and (4) property owned by a trust.

What is a personal representative?

A personal representative is a legal representative of the decedent's estate. While acting as personal representative, you have a duty to act impartially with respect to the estate and all parties interested in the estate. Even if you are a beneficiary of the estate, you must put the interests of the estate in front of your own. You must also observe the standards of care in dealing with the estate assets by acting as a "prudent person" dealing with the property of another would act.

Your main responsibilities, as personal representative, are to: (1) inventory and collect the decedent's assets; (2) pay the proper debts of the decedent; (3) manage the estate during administration (e.g. make investment and sale decisions); and (4) distribute the decedent's assets according to the terms of the decedent's Will or according to the Minnesota intestacy statutes if decedent left no Will.

A personal representative will hire an attorney to assist with these responsibilities, but the attorney is the agent of the personal representative.

How is the court involved?

1. The court appoints the personal representative, and if there is a Will, the court determines whether the Will is valid. If there is no Will, the court determines that the decedent died intestate.

The attorney and the personal representative will prepare a Petition asking the court to do these things. The original copy of the Will, if any, is sent to the court along with the Petition.

2. The court can be requested to resolve disputes that might arise during administration of the estate, including claims.

3. When it is prepared, the Inventory will be filed with the court. The Inventory describes and values all the decedent's assets as of the date of death.
4. If a Final Account is needed, it will be sent to the court for approval. Canceled checks/receipts must be kept for all disbursements made. The Final Account summarizes the transactions which have occurred during the administration of the estate. The accounting begins with the balance from the Inventory (a blank copy of the Final Account form is attached for reference), accounts for expenses paid by the estate and payments received by the estate, and ends with the asset balance on hand for distribution at the close of the administration. Each heir or devisee of the estate will receive a copy of the Final Account along with a consent form to the allowance of the accounting.
5. When the Final Account is approved, the court will be requested to issue a Decree of Distribution and Order Settling the Estate.
6. When the estate administration is complete, the court will order the discharge of the personal representative.

How is the attorney involved?

The attorney prepares and files all court documents. The attorney will assist the personal representative with gathering information on assets and debts and will provide advice and counsel to the personal representative on estate business as requested. The attorney represents you in your capacity as personal representative and does not represent your personal interests.

How are assets identified?

If you have not already done so, please provide us with the following documents and information:

- Names, addresses, dates of birth, and social security numbers for all heirs and beneficiaries
- Copies of last income tax return
- Copies of any gift tax returns
- Copies of life insurance policies owned by the decedent (regardless of whose life was insured)
- Copies of life insurance policies insuring the decedent's life
- Copies of recent annuity or retirement plan statements
- Copies of recent bank, brokerage, or other financial account statements
- Copies of any car, boat, or other vehicle titles and mileage information (if applicable)
- Copies of any promissory notes, contracts for deed, or similar accounts receivable
- Copies of bills for funeral and any related services
- Copies of any recent appraisals

- Copies of deeds and property tax statements for all real estate
- Documentation regarding any salary payable as of date of death
- Copies of any personal guarantees, promissory notes, and mortgages, and information regarding the current balances or amortization schedules
- Copies of last medical bill statements
- Copies of any recent bills (such as credit card statements)
- An inventory of any personal property (especially individual items with a value in excess of \$500.
- Copies of all closely held corporation, LLC or partnership documents, including buy/sell or member control agreements, stock/ownership ledgers, current financial statement, and tax returns for the last 5 years.

How are assets valued?

Our office requests date of death balances on any financial accounts. For assets such as real estate, valuable collections, or business interests, we may recommend you hire an appraiser to appraise the date of death value of those assets. All date of death values are reported on an Inventory, which is filed with the court.

How are assets gathered?

You will need to open a new checking account. This account will be used to receive the decedent's assets, to sell securities, to pay debts, administration expenses, and taxes, and to distribute the remaining assets. You will use the EIN that the attorney has provided to open the account at a bank of your choice. The only assets that should be placed into the new checking account are the decedent's assets and income. It is very important to keep detailed records of all deposits made into the estate account. For instance, you will want to make separate deposits for each asset collected rather than combining several deposits together. This will assist with the preparation of the Final Account and the Estate Tax Return as part of the administration.

You are also responsible for insuring estate assets against loss and damage while those assets are in your care. Therefore, as soon as possible, you should determine what insurance is in place protecting real and personal property of the estate. In addition to determining whether there is any insurance, you should also satisfy yourself that the insurance provides protection against the necessary perils and in adequate amounts.

Some insurance policies may also require that a "change of insured" notice be filed with the insurance company telling them that you are the personal representative of the estate. Some insurance policies may not provide coverage if buildings have been unoccupied over a certain time. Check with the insurance agent to determine if any action needs to be taken.

How are debts, taxes, expenses and creditors paid?

Claims

After the probate notice is published in the paper, the creditors have four months to file a claim with the court and/or you as personal representative. Any creditors that you are aware of must receive mailed notice of your appointment as personal representative. You need to make a reasonable effort to locate any creditors you believe may have a claim against the estate. Please let us know immediately if you learn of any additional creditors.

Any creditor's claims not made known to the court or to the personal representative within the four-month time period are barred.

If you receive a bill or claim that is questionable, you must contact the attorney immediately. If a claim is to be disallowed, a Disallowance of Claim must be sent to the creditor within two months from the expiration of the claims filing period.

General debts

Consult with the attorney before paying any medical bills, loans, and other debts.

You will also need to pay any real estate taxes that might be due on May 15 or October 15 (or November 15 for agricultural land) and any income tax estimated payments that might be due on January 15, April 15, June 15, or September 15.

Important Tax Matters

You will need to file a final individual income tax return (Form 1040) if the decedent's income for the year of death exceeds the filing requirement. The return is due April 15 the year after death.

You may need to file a fiduciary income tax return (Form 1041) if the decedent's estate earns more than \$600 of income during the period of administration.

You will need to discuss with the attorney whether any disclaimers should be filed in the estate. These disclaimers are due 9 months after date of death.

If necessary, you will need to file federal and state estate tax returns and pay the estate tax. The estate tax is due within 9 months of the date of death.

Payment priority for insolvent estates

If the assets of the estate are not sufficient to pay all claims in full, you must make payment in the following order:

1. Costs and expenses of administration;
2. Reasonable funeral expenses;

3. Debts and taxes having preference under federal law;
4. Reasonable and necessary medical, hospital, or nursing home expenses of the last illness of the decedent;
5. Reasonable and necessary medical, hospital, and nursing home expenses for the care of the decedent during the year immediately preceding death;
6. Debts having preference under other laws of the State of Minnesota, and state taxes; and
7. All other claims.

If you do not pay bills in the above order and the estate is unable to pay all claims, you will be personally liable for the payment of such claims. Typically, if the assets are not sufficient to pay all of the debts, the attorney will ask the court for an order confirming how you should pay the debts, and you will make payments according to that order.

How are the assets distributed?

After all of the assets have been gathered, all taxes properly filed, and all enforceable debts/expenses have been paid, the attorney will assist you in preparing a final account. Keeping an accurate and detailed record of the receipts and disbursements for the estate from inception to conclusion of the administration is very important so that preparation of the final, closing documents is efficient. Once the payment of expenses and debts is completed, all assets are identified and tax clearances are obtained, the assets can be transferred to the proper recipients. If any questions exist about the payment of claims and final distribution, we will ask the court to issue an order allowing the final distribution.

How long does an estate administration last?

The length of time during which an estate remains open varies for each estate depending on the following factors:

1. The value, number, and complexity of the assets; and
2. The cooperation of the personal representative, family members, and the heirs or devisees during the probate proceeding.

The estate must remain open for a minimum of four months for the creditors' claims period. If the estate is subject to estate tax, the estate will remain open for a minimum of 9 months.

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