



What Executors Should Know

Legal and Tax Issues of Estates

Navigating the legal and tax issues of estate administration can be confusing. If you expect to be in charge of an estate, or if there is no Will and you are willing to be appointed as the administrator of the estate, you may have questions about what is required and how to proceed.

The purpose of this short pamphlet is to describe the basics of estate administration, including certain legal and tax issues that executors face. It is not imperative that you understand all of the technicalities, but we hope to provide you with a basic working knowledge and some peace of mind.

Estate Administration

In general terms, the process of handling an estate involves identifying all assets belonging to the deceased person (decedent), paying all debts and estate taxes (if applicable), and ultimately transferring the assets from the decedent's name to the designated beneficiary(ies). How this transfer occurs depends on whether the assets are "probate" or "non-probate" assets.

Probate and Non-probate Assets

Probate assets are those assets held in the decedent's name only with no beneficiary designations. These assets may include real estate, bank accounts, and stock titled in the decedent's name alone. Upon death, these assets are transferred under the authority of the Probate Court according to the decedent's Will, or if there is no Will, according to state statute.

Non-probate assets have beneficiary designations or are held jointly with rights of survivorship. Examples of non-probate assets include joint bank accounts, real estate held jointly in survivorship, life insurance, company pension plans, 401(k)s, IRAs, annuities, pay-on-death (POD) accounts, and transfer-on-death (TOD) accounts. Non-probate assets are transferred out of the decedent's name by use of a death certificate and sometimes an affidavit or claim form. Assets with a beneficiary designation will pass directly to the named beneficiaries. Assets held as joint tenants with rights of survivorship will pass directly to the surviving joint owner.

Probate Court Costs

As previously discussed, assets held in the decedent's name only with no beneficiary designations must be ad-

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 **Niehaus**
LAW OFFICE, LLC

4820 Glenway Avenue
Cincinnati, Ohio 45238
(513) 251-4900
www.niehaus-law.com

ministered through the Probate Court. Some people fear that the Probate Court will receive a large percentage of the decedent's assets. In reality, the total court costs for an estate in Hamilton County is \$225. In most cases, the largest expense in estate administration is the attorney fee – not court costs.

Attorney Fees

Attorney fees are customarily determined in one of three ways: a percentage of the assets involved, an hourly rate, or a flat fee. The Hamilton County Probate Court has guidelines for what they ordinarily consider to be reasonable attorney fees; it ranges from 5.5% to 2%, depending on the size of the probate estate. The attorney may also charge 2% on real estate that is not sold and 1% on non-probate assets includible on the estate tax return. Any fee above the guideline amount requires special approval of the court.

Rather than basing their fee on the amount of assets in the estate, many attorneys charge based on the amount of time and expertise required to complete the work. Be certain to find out how the attorney you are considering to handle the estate is going to charge and obtain a quote of the total fee when engaging the attorney's services.

Attorney fees are payable at the end of the estate process when the final account is prepared for filing with the Probate Court, unless otherwise approved by the Court.

Role of the Executor

Your duties as executor include giving notices to the beneficiaries and next of kin, gathering assets, paying bills, filing tax returns, making distributions to beneficiaries, and providing an accounting of all transactions for the Probate Court. As executor, you act as a fiduciary, and as such, a high level of accountability is required for your work. An attorney well versed in probate matters can guide you to serve as a responsible fiduciary. You are free to choose any attorney that you desire; it is wise to find one who is experienced in probate and tax matters.

Executor Fees

Executors can be compensated for the responsibility taken and the time and effort they put in to complete the estate process. Executor fees are set by Ohio statute and are somewhat similar to attorney fees: 4% of the first

\$100,000 of probate assets, 3% of the next \$300,000, and 2% of the assets above \$400,000. In addition, there may be a fee of 1% on real estate which is not sold and on non-probate assets includible on the estate tax return (except for assets in survivorship, for which there can be no fee).

Some executors consider their services to be a gift to their families and choose to forego the fee. Other executors choose to take the fee because of the complexity of the estate or other factors. It is entirely your decision.

Payment of the Decedent's Debts

Creditors have six months from the date of death to file any claims for debts incurred during the decedent's life. Debts are paid from the decedent's probate assets.

It is important to understand that as executor, you are not *personally* responsible for any debts of the decedent. If the decedent's debts are in excess of the probate assets, then a notice of insolvency can be filed with the Probate Court, and the debts will be paid in accordance with a schedule established by Ohio statute. In that case, family members should seek legal advice before negotiating to pay any of the decedent's bills that exist at his or her death.

In some cases, you may be asked to take personal responsibility for expenses by signing in your individual capacity, instead of as executor. For instance, funeral homes and cemeteries require that an individual sign to guarantee payment of burial expenses. In that case, you would be *personally* responsible to pay if the estate could not.

Estate Tax

At the death of the decedent, there may be federal or Ohio estate taxes due. For 2011-2012, the federal

estate tax only applies to assets greater than \$5 million (\$10 million for a couple). For 2011-2012 in Ohio, the first \$338,333 passes without estate tax; assets from \$338,333 to \$500,000 are taxed at 6%, and then 7% above \$500,000. The Ohio estate tax has been repealed, and after December 31, 2012, no estates will be subject to this tax.

Income Tax — Estate

As executor, you may need to file a final income tax return for the decedent. You may also file an income tax return for the estate if the probate assets have generated income after the date of death. In that case, beneficiaries will be given a Schedule K-1 to report any income or losses generated from the estate on their individual income tax returns. One of the important concepts of estate income tax is the step-up in basis, which allows assets to be transferred to heirs or sold using the date-of-death value as the cost basis instead of the decedent's original purchase price. This can be a tremendous benefit when the decedent has stock or real estate that has appreciated greatly in value during his or her lifetime. The step-up applies whether the assets are sold while registered in the name of the estate or after they have been distributed to heirs.

Income Tax — Beneficiaries

Distributions received by inheritance are generally not taxed as income.

Exceptions can include IRAs, annuities, savings bond interest, or any asset carrying tax-deferred income. Special rules apply as to how distributions can be made from tax-deferred assets: often with IRAs and annuities, distributions can be stretched over a number of years, which may ease the tax burden for a beneficiary. Each beneficiary of a tax-deferred asset is responsible for the taxable income on their portion of the asset.

We hope this informational pamphlet has been helpful. It provides an overview of legal and tax issues executors face when handling an estate. It is not to be considered legal advice, since every situation is unique and more complex than this pamphlet can address.

At Niehaus Law Office, we have served thousands of clients since 1978. For prospective clients with estate matters, we meet, identify the work required to administer the estate, and provide a quote of the total fee that we would charge for our services. If you would like to schedule a meeting, please contact our office.



Francis J. Niehaus



David D. Kammer



Anne M. Niehaus



4820 Glenway Avenue
Cincinnati, Ohio 45238
(513) 251-4900
www.niehaus-law.com