

Memorandum

TO: LeBlanc & Young Clients

DATE: January 2018

SUBJECT: Guidelines for Fiduciaries Following a Decedent's Death

Estate Administration is the process that ensues after a person has passed away (the “decedent”). During this period, information concerning assets and liabilities is gathered, bills are paid, tax returns are filed, and generally the affairs of the decedent are attended to. The term “Estate Administration” is a broader concept than “Probate.” Probate proceedings may or may not be required as part of the estate administration process, depending on the types of assets the decedent owned and how they will pass to the beneficiaries of the estate. For example, a life insurance policy payable by beneficiary designation to a surviving spouse is not a probate asset and would not necessitate the probate of a Will or the appointment of a personal representative. When an individual who has all of his or her assets held in a revocable trust dies, probate may not be necessary because assets held in trust are not probate assets. However, a bank savings account owned individually by a decedent would be considered a probate asset (provided it did not pass according to a so-called “payable on death” or similar type of designation).

Probate in Maine is not a difficult, expensive or time-consuming process for most estates and thus avoiding probate is not an objective of most estate plans of Maine residents. Generally a Will is probated and a Personal Representative is appointed in the same proceeding. The Personal Representative must then proceed with the administration of the estate. If there is no probate, it must be determined who will take the responsibility to insure that the necessary tasks are completed. An example might be the Trustee of a trust established by the decedent during his or her lifetime. The facts of each particular decedent's financial affairs must be discussed with an attorney to determine how best to complete administration.

The amount of time that will be required for the administration of a particular estate depends on the circumstances and the complications that may arise with regard to that estate. Maine law provides a period of four months after the first newspaper publication of notice to creditors for the filing of claims against an estate. Consequently, estates that go through probate proceedings should be held open for at least four months after publication of such notice. The date of publication will usually be within a month after proceedings begin in the Probate Court. Due to a variety of concerns about Maine's four month claim period, we generally look to the alternative nine month (from date of death) claim period set forth in the statutes as the safer one to utilize in settling Maine estates. If the estate does not require the filing

of a federal or Maine estate tax return, and if there are no complications in connection with the Certificate of Discharge of Estate Tax Lien coming from Maine Revenue Services, it may be possible to close the estate soon after the expiration of that nine-month “proof of claim” period.

If a federal or Maine estate tax return is required to be filed, the time for settling an estate normally expands to eighteen months or more. Typically, the federal and Maine estate tax returns cannot be completed much earlier than the due date, which is nine months after date of death. The IRS then generally takes a year or more before **commencing** the audit process. Maine is slower to commence any audit process, usually waiting for the federal process to be concluded. Lengths of audits vary greatly and can range from a few months to years, and during that time the administration must remain open and active.

The outline below sets forth various “typical” duties of a fiduciary settling the estate of a Maine decedent. This list is not meant to be totally comprehensive. Its purpose is to provide a general road map of the process of estate administration. Not all estates will need to address all of the duties set forth below.

A. Probate Court Proceedings

1. Preparation and filing of Probate Court applications, petitions and other documents needed to secure the appointment of the Personal Representative.
2. Preparation and transmittal of Notices of Appointment to estate beneficiaries and any other interested parties.
3. Preparation of a probate inventory (usually by three months after appointment) to be made available to any beneficiary of the estate requesting same. This Inventory is not required to be filed in Probate Court.
4. Preparation of a probate account (usually at the very end of the estate settlement process) reflecting all transactions during the period of administration and showing how the balance of the estate has been or will be distributed to the estate beneficiaries. This can involve a separate plan of distribution with receipts, releases and consents to accountings.
 - a. Copies are usually given to all parties with an interest in the residue of the estate for their approval before the estate is closed.
 - b. The Account is generally not filed in Probate Court unless there is a dispute or problem to be resolved by the Probate Judge.
5. Filing of a Sworn Statement in Probate Court to terminate probate proceedings.

B. Asset Management

1. Gathering together information on the existence, location and nature of all the decedent’s probate property, joint property and non-probate assets, making certain to obtain specific information about how the assets are titled.
2. Arranging for proper custody and safekeeping of valuable assets during the period of estate

administration.

3. Confirming the adequacy of casualty and liability insurance on probate property during the period of estate administration.
4. Sending notices of decedent's death to Social Security Administration (if not done by the funeral home), creditors (especially regarding credit cards), and others as appropriate, and canceling of subscriptions, etc., as appropriate.
5. Securing confirmations of bank balances, securities owned, title to real property and tangible personal property, and other information needed on assets owned by the decedent.
6. Securing information about insurance on the decedent's life for estate tax reporting purposes.
 - a. Also need to determine whether Personal Representative should file any claims on same.
 - b. If so, these claims should be filed in a timely manner.
7. Securing information about pension, profit sharing, IRA and similar benefits/entitlements payable as a result of the decedent's death.
 - a. Again, Personal Representative should determine whether he or she needs to file any claims or make any elections regarding such benefits.
 - b. If so, such claims/elections should be filed in a timely manner.
8. Securing appraisals of estate assets by competent, disinterested appraisers for probate and estate tax purposes, particularly regarding real estate, tangible personal property, and securities not regularly traded on a stock exchange.
9. Establishing and operating an estate checking account through which all income and most principal transactions can be tracked and from which all debts, taxes, expenses of administration and bequests can be paid.
 - a. This is an extremely important aspect of most estate settlements. Doing this properly and accurately usually requires a working knowledge of probate and fiduciary income tax accounting concepts.
 - b. We generally prefer to handle the estate checking account at LeBlanc & Young in order to avoid errors and duplication of effort. Our fees are usually higher when we do not handle the estate checkbook, because of all the additional time that is usually spent trying to work with the Personal Representative to keep the record straight for both probate and income tax reporting purposes.
10. Seeing to the proper investment of the estate's liquid funds during the period of administration.
11. Collecting information on the decedent's debts and claims against the estate, and determining

which debts and claims are valid for payment from the estate.

12. Determining the estate's overall cash needs (for expenses, taxes, etc.) as early in the administration process as possible.
13. Selling estate assets if necessary to meet the cash needs of the estate in a timely manner.
14. Seeing to the timely payment of all valid debts, funeral charges, expenses of administration, estate taxes and fiduciary income taxes.
15. Seeing to the timely distribution of estate assets to beneficiaries of the estate, and receiving from such beneficiaries appropriate receipts for the Personal Representative's records.

C. Estate Taxes

1. Preparation and filing with Maine Revenue Services in Augusta of forms needed to determine the amount, if any, of any estate tax due the State of Maine.
 - a. Any such tax would generally be due nine months after date of death, unless special deferral provisions apply.
 - b. There is generally no Maine estate tax if the decedent was survived by a spouse or if the total estate (probate and non-probate) is valued at less \$5.6 million (for decedents dying in 2018). The total of assets would include probate assets, as well as non-probate property, including IRAs, trusts, life insurance and joint accounts funded by the decedent.
2. Securing of a Certificate of Discharge of Estate Tax Lien from Maine Revenue Services and recording of same at the appropriate Registry of Deeds. This is needed to clear title on the decedent's real property, including property owned jointly with another. This procedure is necessary if the estate includes Maine real estate, even if the total estate is \$5.6 million (for decedents dying in 2018).
3. There is generally no federal estate tax due unless the total amount passing to beneficiaries other than the surviving spouse, a qualifying marital trust, or charity exceeds \$5.49 million. However, any estate valued at more than \$5.49 million (2017) or \$11.18 million (2018), even if non-taxable, must file a U.S. estate tax return (Form 706) with the IRS within nine months of the decedent's date of death. Similarly, any estate valued at more than \$5.6 million (2018), even if non-taxable, must file a Maine estate tax return (Form 706ME) within that same nine-month period. Both the IRS and Maine Revenue Services allow extensions of time to actually file these returns; but in most cases where a tax is likely to be due, that tax must be paid on the 9-month due date, even if the return itself will be filed later. If a federal tax return is to be filed, because an estate exceeds the exemption, there is another set of filing due shortly thereafter to transfer cost basis information on to the beneficiaries. Estates that are valued under the federal exemption may, however, choose to file a federal form 706 to preserve the possibility of a portability election. This is a critical step in preserving the predeceased spouse's unused exemption.

- a. Form 706 must be accompanied by various supporting documents like appraisals, bank balance confirmations, etc.
 - b. Any federal estate tax payable is generally due nine months after date of death, unless special deferral provisions apply.
 - c. Every Form 706 is reviewed by the IRS and every Maine Estate Tax return (Form 706ME) is reviewed by Maine Revenue Services. This tends to slow down the estate settlement process.
4. In determining the size of a decedent's estate for state and federal estate tax purposes, all so-called "adjusted taxable gifts" made after 1976 must be counted, so copies of any post-1976 gift tax returns must be obtained to properly complete these estate tax returns.
 5. There are also certain "elections" available to a Personal Representative in certain estates (such as whether to elect alternate valuation, or QTIP qualification for the marital deduction, or federal portability, or Section 2032A special use valuation, or Section 6166 deferral on payment of tax) which have to be carefully considered whenever available.

D. Income Taxes

1. Determine if the estate/trust has any income-producing probate property and keep track of all income and deductions relating to that property during the period of administration.
2. Obtain an estate or trust employer identification number.
3. Prepare and file with the IRS a Notice of Fiduciary Relationship (Form 56).
4. Determine the estate's/revocable trust's fiscal year for income tax reporting purposes.
5. Determine whether any postmortem income tax planning opportunities present themselves and, if so, determine how best to utilize same for the benefit of the estate/trust and its beneficiaries.
6. Prepare and file fiduciary income tax returns on behalf of the estate/trust and pay any income tax due from estate assets.
7. Determine optimum timing of estate distributions and the taking of income tax deductions to maximize income tax planning opportunities for the estate/trust and its beneficiaries.
8. Prepare and file a final set of Forms 1041 for the estate/trust, and prepare and distribute to the IRS and to estate beneficiaries Schedules K-1 reflecting income and deductions to be included on the personal income tax returns of the beneficiaries.