

## How to Settle a Connecticut Decedent's Estate

For most people, the procedure involved in settling a decedent's estate is puzzling and the length of time required is difficult to understand. The following is an attempt to explain the settlement process and why the time frame is at least six months for smaller estates, and perhaps two years or more if a federal estate tax return is required.

### The Start of Probate Proceedings

Connecticut law requires that anyone in possession of a Will signed by the decedent must deliver it to the appropriate Probate Court within thirty days after the date of death. To start the probate proceedings, an application also should be filed asking the Court to declare the Will valid and approve the appointment of the Executor named therein to settle the estate.

If all the "intestate heirs" (i.e., those who would receive the estate if there were no Will) waive their right to object, the Court usually will act on the application without delay. If any intestate heir does not sign a waiver, the Court will give notice that the heirs have two weeks to request a hearing. If a hearing is requested, schedule a hearing on the application and mail notice of the time and place to all interested parties. If any of the heirs is a minor, the Court will appoint an adult as "guardian ad litem" to represent the minor and protect his interests in the estate during the settlement proceedings. Unless some interested party appears at the hearing to object, the Court will approve the Will, appoint the Executor and publish a notice in the newspaper advising creditors to present any claims to the fiduciary.

In estates where there is no Will, an application usually is filed by an heir or a creditor of the decedent, requesting appointment of an Administrator. The procedure for appointment of an Administrator is very similar to the appointment of an Executor as outlined above.

If the probate estate is less than \$40,000 and the decedent owned no real estate in his or her own name, the estate may qualify for the "small estates procedure." The Executor files an Affidavit in Lieu of Administration and the Court issues a decree distributing the property to the person entitled to receive the probate estate either under the laws of intestacy or by waiver of beneficiaries who do not wish to claim any part of the probate estate.

### Duties of the Executor

#### (a) The Initial Phase of Administration

The Executor has custody and control of the decedent's "probate estate" consisting of those assets owned by the decedent in his sole name (except real estate situated outside Connecticut, which will be subject to separate proceedings in the state in which it is located). The Executor also may have some duties with respect to "non-probate" assets that are not under his control, but are reportable on the Connecticut and/or federal estate tax returns which he must file for the estate; (e.g., jointly owned property, life insurance proceeds, real estate outside Connecticut, trusts in which the decedent had an interest, gifts made by the decedent before his death, certain pensions and annuities).

Normally, the Executor's first step is to open an estate checking account so that he can pay funeral expenses and debts of the decedent, and have a record of all receipts and disbursements which will be needed for the preparation of the estate's tax returns and Probate Court accountings.

Next, the Executor will prepare an inventory of the probate estate listing the property owned by the decedent and its value at the date of death. For items having no precise value, such as real estate, tangible personal property or interests in closely held businesses, an appraisal by a qualified, disinterested appraiser may be advisable. This inventory should be filed with the Probate Court within two months after the Executor's appointment.

The Executor may want to notify any potential creditors to present any claims they may have. The Executor is not personally responsible for claims that have not been presented within 150 days (5 months) but creditors may recover from the beneficiaries of the estate. The Executor should contact the three crediting reporting agencies (Experian, Trans Union and Equifax) to notify them of the decedent's death.

It is the Executor's duty to preserve the assets of the probate estate and protect them from loss, depreciation or destruction, until they are distributed to the beneficiaries. What steps this may require will depend on the types of property involved. For example, real estate and tangible personal property should be adequately insured; securities should be held in safekeeping and should be reviewed to determine whether any sales are advisable to avoid potential loss. Claims presented by creditors should be checked for validity, and any which the Executor determines are not legal obligations of the decedent should be disallowed. Cash and checking accounts, except the amount needed for current expenses, should be put into income producing investments such as savings accounts, certificates of deposit or government securities.

As soon as possible, a prudent Executor will make an estimate of the cash needed to pay claims, taxes and administration expenses. If the cash readily available to the estate from bank accounts, insurance proceeds, etc., is insufficient to cover these items, he will determine how and when to raise the balance, either by selling estate assets, borrowing, obtaining contributions from the beneficiaries or a combination of such methods.

### **(b) Preparation and Filing of Tax Returns**

#### ***(1) Estate Tax Returns***

Within six months after the date of death, the Executor must file a Connecticut estate tax return regardless of the value of the estate. Connecticut has a \$2.6 million estate tax exemption. It is based on the taxable estate after deductions. Connecticut has an unlimited marital deduction. Consequently, a \$5.2 million estate with a surviving spouse is still considered a non-taxable estate. If estate taxes are owed, the Executor must file the return with Connecticut Department of revenue Services. If the estate does not owe Connecticut estate taxes, the executor files the return with the Probate Court in which the estate is administered.

If the gross estate exceeds \$11.2 million or the surviving spouse wants to preserve the decedent's unused estate tax exemption, a federal estate tax return is also required. Each spouse has his or her own estate tax exemption and can use a predeceased spouse's unused estate tax exemption. This principle is known as the "portability of unused exemption between spouses." With portability, couples can now have assets of \$22.4 million without owing any federal estate tax. A surviving spouse who remarries will lose the prior deceased spouse's exemption. A federal estate tax return is required within nine month after date of death. Payment of 100% of any tax liabilities shown on these returns is due when the return is due.

For tax purposes, the estate may include several types of assets in addition to the probate estate, such as life insurance proceeds, jointly owned property, trusts either created by the decedent or in which he had certain interests, gifts made before death, retirement plans and some types of pensions and annuities. Certain information about these non-probate assets must be reported on the tax returns whether or not the Executor concedes that they are subject to tax.

For two reasons it is customary not to prepare these returns or pay the tax until shortly before they are due: (i) delaying payment of the taxes until about the due date gives the estate the use of the tax money for as long as possible; and (ii) for federal estate tax purposes, the Executor has the right to value the assets, either as of the date of death or as of the "alternate valuation date" which is six months later. Obviously, until the due date of the federal estate tax return has expired, the Executor cannot know which valuation date is favorable.

#### ***(2) Income Tax Returns***

The Executor must file a final income tax return for the decedent, for the year in which he dies, reporting his income from January 1 until the date of the decedent's death. Income received after the date of death is taxable to the estate as a separate taxpayer, and is reportable on a fiduciary income tax return — Form 1041.

The Executor has the right to pick a fiscal year for estate income tax purposes ending on the last day of any calendar month within twelve months after the date of death. In some cases, the choice of the fiscal year and the timing of distributions to beneficiaries

can substantially change the amount of income tax payable on the estate's income. If the beneficiaries are in income tax brackets higher than the estate's income tax bracket, there may be a tax advantage in delaying the distribution of estate assets as long as possible. Naturally, decisions on these points should be made only after all relevant factors have been considered.

### *(c) What Happens After the Estate Tax Returns Are Filed?*

The Probate Court will send an invoice for the probate court fees. For example, an estate of a person without a spouse that has a gross estate of \$500,000 will owe a Connecticut probate fee of \$1,865.00.

The Connecticut tax authorities have the right to object to any item on the Connecticut death tax return by filing an objection within 120 days after the tax return is due. The federal tax authorities have the right to audit the federal death tax return at any time within three years after it is due. In most cases, Connecticut will not pursue its objections until after the federal tax has been finally determined.

Typically, the Internal Revenue Service will take action on the federal return within a year after it is filed - sometimes as soon as two or three months after the filing date. It will either issue a closing letter accepting the return as filed, or it will notify the Executor that the return is being audited. If there is an audit, what it will involve and how long it will take will differ on each estate.

If there is a serious disagreement as to the valuation of assets or whether certain items are taxable, the Executor may refuse to settle with the examining agent. In that event, the case will be referred to the Appellate division of the Revenue Service. If a conference at that level does not produce agreement, the questions may then be litigated in either the Federal District Court, or the Tax Court, with that Court's decision being subject to appeal to the Circuit Court of Appeals or ultimately to the U.S. Supreme Court.

In our experience, a number of federal estate tax returns are accepted without audit. Of those selected for audit, most can be settled with the examining agent, while a few involving unusual problems may be taken to the Appellate Division. Almost never does the case go beyond that level to the Federal Courts.

### *(d) Completion of Administration*

Once the Federal Estate Tax Closing letter is received, a copy is sent to the Connecticut Tax Department, after which the Department will make its computation of the Connecticut tax. Usually, the Connecticut Tax Department accepts the federal determination as to the valuation and taxability of assets.

Frequently, the Department will take several months after receiving the closing letter before issuing its computation. After the Executor receives that computation, he may then file his final account with the Probate Court, showing the inventory he started with, receipts and disbursements during the administration period and what assets remain on hand for distribution to the beneficiaries.

The Probate Court will then order a hearing on this account and mail notices to all interested parties. Unless there is an objection at the hearing, the account will be approved and distribution of the remaining assets can take place.

## **Time Required To Complete Estate Administration**

So, as pointed out at the beginning, the complete settlement of a decedent's estate may take a long time. A reasonable estimate for an estate too small to require a federal estate tax return is six to twelve months. For larger estates, a realistic minimum is two years, and if the federal estate tax return is audited, three years or more is not uncommon.

This does not mean that the estate assets are frozen during this entire period. In general, the Executor may distribute assets five months after being appointed, except for the amount needed to pay claims, taxes and administration expenses. If necessary, payments can be made before that time for support of the decedent's spouse and dependent children. Usually, there is no problem in making estate assets available for their needs almost immediately after the Executor is appointed.

### Social Security

The Social Security Administration will only pay a \$255 death benefit if the decedent left a spouse or left a child who was eligible for benefits on the decedent's earnings record. At retirement, a spouse will receive the higher of his or her retirement benefit or the decedent's retirement benefit.

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