

Duties of Personal Representative

1. **INTRODUCTION.** This memo provides a simplified overview of the estate administration process. A personal representative is a court-appointed “fiduciary” who manages the estate of a deceased person. The term “fiduciary” refers to someone who is acting in a position of trust for the benefit of others. As a fiduciary, a personal representative is held to a high standard of integrity, ethics, and accountability.

1.1 **Title.** Nevada law uses the term “personal representative” to refer to the person appointed by the court to administer and distribute the estate pursuant to the terms of a Will or, if there is no Will, pursuant to the terms of the intestate succession laws.

(a) The term “personal representative” refers to:

- (1) Executor—the person who is nominated under a Will;
- (2) Administrator—the person who is appointed to administer an estate when there is no Will; and
- (3) Administrator with Will Annexed—the person who is appointed as administrator when the decedent left a Will, but the named executor fails or ceases to serve.

(b) If the Will creates a testamentary trust, the personal representative may also have the title of trustee.

1.2 **Persons Serving Jointly.** Two or more persons may be appointed to act as co-personal representatives. When more than one personal representative is serving, the co-personal representatives should act together on all issues. There are exceptions when one personal representative is in Nevada, and the other personal representative is out of state.

1.3 **Official Appointment; Issuance of “Letters”.** Official appointment as a personal representative comes only by court order (a Will may nominate a personal representative, but there is no authority to act until the court orders it). The personal representative will be given Letters Testamentary, Letters of Administration, or Letters of Administration with Will Annexed depending on

which process applies.

1.4 Powers. After official appointment, the personal representative may take the following actions without further court authority:

- (a) Collect the decedent's personal property and assume control of real property located in Nevada. If real property is located outside of Nevada, contact legal counsel in that state to open an ancillary estate.
- (b) Collect the decedent's cash and cash accounts and place them in an estate account or the attorney-client trust account, as authorized by the court.
- (c) Keep real estate in good repair. Prepare the property to be sold, or, if the Estate will be open for an extended period of time, prepare the property to be rented.
- (d) Collect interest, dividends, rents, and other income due the decedent, and deposit it with the other cash of the estate.

1.5 Under Nevada law, a personal representative can *NEVER*:

- (a) Deposit estate funds into a personal account;
- (b) Place estate assets into a personal safe deposit box;
- (c) Co-mingle the assets of the estate with those of any person;
- (d) Take title to assets in the personal representative's personal name without reflecting their capacity as an executor or administrator; or
- (e) Distribute assets to a beneficiary without prior court approval.

2. PROBATE OVERVIEW. Administration of the estate begins when the court issues an order formally appointing the personal representative, and ends when the court issues an order formally discharging the personal representative.

2.1 Special Administration. If there will be a delay in getting a personal representative appointed, or if there is a special urgency, a qualified person can file a petition for appointment of as special administrator. The special administrator may be granted special authority to take urgent actions as necessary, as well as to investigate the nature and extent of the assets subject to

probate and collect the same.

2.2 Petition for Appointment as Personal Representative. The person or persons entitled by law or under the Will to be appointed as personal representative files a petition to be open the estate and to be appointed as personal representative. If there is a Will, the same petition asks the court to admit the Will to probate.

2.3 Actions as Personal Representative. Once the estate is opened and the personal representative is appointed, they have the duty to take the following actions:

- (a) Identify, collect, and liquidate/sale (if applicable) assets of the estate.
- (b) Notify all creditors of the decedent regarding the administration of the estate, and of the time period to file a claim.
- (c) File an Inventory of estate assets.
- (d) Manage and invest (when applicable) the assets of the estate until time for distribution.
- (e) Keep appropriate records of estate property and transactions, including the filing of tax returns, inventories, and accountings.
- (f) Pay taxes, debts, and other expenses of the estate.

2.4 Final Accounting; Decree of Final Distribution; Final Discharge. When a final accounting has been filed, a petition is filed requesting approval of the final accounting and a decree of final distribution. After the court orders a final distribution:

- (a) The personal representative makes the approved distribution of the estate's assets and obtains receipts.
- (b) Upon the filing of all distributees' receipts, the court issues an order of final discharge.

2.5 Court Hearings. When a petition is filed in a probate matter, the court will set a hearing date. Unless a petition is contested, the personal representative will not usually need to attend the court hearings.

3. MANAGEMENT OF ASSETS. After appointment, the personal representative must

take possession of the decedent's assets.

3.1 Collection: It is the personal representative's responsibility to gather the decedent's personal property.

- (a) The Decedent's accounts at financial institutions should be given early attention. The balance of each account should be transferred into a federally-insured account in the name of the estate. Or, the funds may be held in the attorney-client trust account of the law firm representing the personal representative.
- (b) Precious metals, securities and bonds, jewelry, and other items of substantial value should be kept in a safe deposit box or other secure location.
- (c) The proceeds from life insurance and other death benefits are generally payable to the designated beneficiary or beneficiaries and are not subject to probate. If the designated beneficiaries are all deceased¹ (or if no beneficiary is named), the proceeds may become part of the estate upon completion of the appropriate forms to claim the funds.
- (d) All credit cards issued in the decedent's name should be cancelled.
- (e) Estate assets should be adequately insured against damage, theft, and loss. All insurance companies involved should be contacted to make sure existing policies continue in force after the decedent's death. The personal representative may need to be added as an insured on a rider to a policy.

3.2 Inventory. A personal representative must prepare an inventory of the decedent's assets. The inventory must be filed with the court, and must include a value for each item (valued as of the decedent's date of death). Real property and other items whose value may vary must be appraised. The value shown on the inventory should reflect the gross value, list the amount of encumbrances or liens against the asset, and show the net value of each asset.

3.3 Record Keeping. The personal representative must keep an exact record of all receipts and disbursements. The records should reflect the source of each receipt (it should indicate whether it represents principal or income) and the purpose of each disbursement.

¹ If the decedent's ex-spouse is still listed as the beneficiary, then such designation is generally automatically revoked upon divorce and the proceeds may become an asset of the estate.

- 3.4 Disbursements.** A personal representative may use estate funds to pay for administrative expenses of the estate. However, it is recommended that the personal representative not write any checks or make other disbursements without first consulting with their attorney.
- 3.5 Selling Estate Assets.** It may be necessary to sell estate assets to avoid depreciation loss, to raise cash needed for expenses, to comply with the terms of the Will, or to prepare for final distribution. The personal representative should NOT make any arrangements for the sale of assets without first consulting with their attorney. Depending on the type of asset, court approval may be needed.
- (a) Depreciating assets, perishable items, and assets that will incur a loss or expense if not sold promptly can be sold without prior court authorization. Even so, the personal representative is responsible for the true value of the assets, regardless of the sale price. If there is a potential for a dispute, it is best to ask the court to ratify the sale.
 - (b) Selling real property generally requires court approval. Expecting a quick sale of real property from an estate is unrealistic. Before acting in regard to the sale of real property, the personal representative should coordinate with their attorney to ensure the proper steps are followed.
- 3.6 Disposing of Junk.** You can dispose of items that are truly worthless. The best approach is to confirm with all the heirs/beneficiaries that they are not interested in such items because they sometimes have sentimental value. You may be held liable to the estate for the value of disposed items that had value. If there is any question or concern, you can seek approval from the court to abandon or dispose of the property in question.
- 3.7 Debts, Claims, Expenses.** Creditors and claimants must be put on notice that they have 90 days in which to file a claim. You must provide us with a list of known creditors so we can mail them the required notice forms.
- (a) After the creditor period expires, claims are reviewed to determine their validity. Creditors whose claims are rejected must be notified, and they are given 60-days to bring suit to determine the validity of their claim.
 - (b) Generally, valid creditor claims are paid at the time the estate closes. If they estate will remain open for an extended period of time, you can petition the court to confirm payment to the creditors sooner.

4. ACCOUNTINGS AND DISTRIBUTIONS. You are required to account to the

probate court for everything you receive and everything you disburse.

- 4.1 Annual Accountings; Final Accounting.** The first accounting is due 6 months after the personal representative is appointed. If the estate does not close shortly thereafter, an annual accounting is required until the estate is closed. When the estate is ready to be closed, a final accounting is required.
- 4.2 Content of Accounting.** You will have to provide a summary of all transactions incurred on behalf of the estate. The accounting will show the starting balance (which is the value of the inventory), the receipts (or assets received by the estate), the credits (or disbursements and losses of estate assets), and the total amount in the estate at the end of the accounting period.
- 4.3 Closing the Estate.** The estate is ready to be closed when all assets have been collected and liquidated (if applicable) and there are no unresolved disputes regarding rights to the estate.
- (a) The estate cannot be closed if:
- (1) there is pending litigation involving the estate;
 - (2) assets need to be sold before distribution;
 - (3) money or other property that is due to the estate is still owing and uncollected;
 - (4) creditors' claims remain unsettled;
 - (5) there is a dispute among beneficiaries regarding the accounting or distribution rights; or
 - (6) tax liabilities or other legal obligations of the decedent or the decedent's estate have not been satisfied.
- (b) If the estate is ready for final distribution, the personal representative files a final accounting for court confirmation and requests authorization to distribute the estate.
- 4.4 Distributions.** The ultimate goal of probate is to distribute the estate's assets to the parties entitled to such. A personal representative **MUST** get prior permission from the probate court before making any distribution to an heir/beneficiary. A personal representative may be held personally liable for

any improper distributions.

4.5 Anticipating Disputes: If you anticipate that some of your decisions may be challenged by a beneficiary or other interested party, or if some of the trust provisions are ambiguous requiring court interpretation, it may be best to seek court approval prior to taking such action. This gives the beneficiaries an opportunity to express their concerns to the court, but once the court has made a decision, your compliance with a final court order cannot be subsequently challenged.

5. CONCLUSION. The probate administration process will take your time and effort. It takes time to prepare petitions, inventories, and other court-required documents. Most probates take a *minimum* of five to six months to complete. From the day of your appointment until you are finally discharged, the primary responsibility for the estate rests on your shoulders. Our task is to help ease your burden in every way possible. So, if you need help, please let us know.

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