

Law Office of
Olivia Wann & Associates, PLLC

So you're an Executor of an estate? Now what?

By Olivia Wann, Esq.

Understanding the Terms

An Executor is the person appointed in a person's Last Will and Testament to administer the will. Executor is the masculine and Executrix is the feminine. It is now customary to use the term Personal Representative which is gender neutral.

An Administrator is a person appointed by the court to manage the assets and liabilities of the person who died without a will. Administrator is the masculine term and Administratrix is the feminine.

An Administrator CTA is a person appointed by court to manage the assets and liabilities of the person who died, when a prior Administrator, Executor, or Personal Representative can no longer act or when the person appointed in the Will refuses to act.

You are not the official Administrator, Executor, or Personal Representative until you are officially appointed by the court. You will receive Letters of Testamentary (when the decedent died with a will) or Letters of Administration (when the decedent died without a will).

Decedent is the term used to refer to the person who died.

Bond is the term for monies held by the court in case the Personal Representative makes a mistake, allowing the beneficiaries to be compensated for such mistake.

Heirs at law refers to the individuals, according to state law, that inherit when someone dies.

Personal Representative is used throughout this brochure to mean an Executor, Executrix, Personal Representative, Administrator, Administratrix, and Administrator CTA.

Different Ways to Handle an Estate

Prior to opening a probate, our lawyers meet with the nominated Personal Representative or family members to identify assets and determine whether or not probate is even necessary. There are different ways to handle the estate:

- Small Estate Affidavit

- Muniment of Title
- Affidavit of Heirship
- Probate
- No probate because assets are jointly titled or have survivorship options

Small Estate Affidavit avoids a full probate providing the estate is valued less than \$50,000 and there is no real property (land, house). This process may be used to administer the estate's bank accounts, stocks, bonds, retirement accounts, unclaimed property, life insurance proceeds and other personal property. There is a 45 day waiting period from the date of death. A bond must be posted equal to the estate value, unless waived in the Will or all beneficiaries agree to waive bond. We must list all the creditors. The Affiant, the person in charge of distributing the assets, is finally discharged from liability under bond when the time of one year has passed or submitting an affidavit that all creditors have been paid.

Muniment of Title is also a way to avoid a full probate. This process is used when the decedent left a will and real property is the only asset in the estate. It cannot be used to distribute personal property such as furniture, vehicles, and bank accounts.

Affidavit of Heirship is utilized to transfer real estate when there is no will and the property distributes to the decedent's heirs at law, such as spouse and children.

If the decedent was age 55 or older, state law requires that we file a release from the Bureau of TennCare. If long term care benefits were paid by TennCare, they will seek a recovery of those funds from the estate. If no benefits were utilized, they will provide a release. This is a required process in the probate process and is necessary to sell the real estate.

Initial Procedures

Locate the Last Will and Testament as well as any codicils. Engage an attorney who is familiar with probate such as The Law Office of Olivia Wann & Associates, PLLC. Obtain the death certificate. Obtain the addresses and telephone numbers of beneficiaries and heirs at law.

Probate Process

Probate takes place in the county where the decedent last resided or where the decedent owned real estate.

The law office will draft the necessary documents to admit the Last Will and Testament to the probate court. The court will officially appoint the Personal Representative nominated in the will. If there is no will, the documents will be prepared to name an Administrator to handle the estate.

Attorney: Notification

The Law Office of Olivia Wann & Associates, PLLC will notify the heirs-at-law and beneficiaries.

As a Personal Representative, the law imposes a "fiduciary duty," which means that the Personal Representative must demonstrate the highest degree of honesty, diligence, and good faith, and must act impartially toward the beneficiaries and creditors of the estate. The Personal Representative must keep accurate and up to date records of all financial transactions involving the estate. The Personal Representative may not sell any estate assets to themselves, to any of their business associates, or to any of their immediate family members unless all the residuary beneficiaries of the estate consent to the sale in writing or unless they obtain approval of the sale from the Chancery Court.

If the individual serving as the Personal Representative feels that they may have difficulties performing their duties, then they should inform the assigned attorney immediately. Do not delay in notifying the law firm of any problems or concerns as this may result in very serious consequences.

The Personal Representative has the duty to keep the beneficiaries of the estate informed as to the status of the estate.

The remainder of this document serves as a checklist of actions that are normally required to administer the decedent's estate. Some of these actions must be taken by the Personal Representative but other actions can be, and often are, delegated to the attorney for the estate or to others, such as accountants or insurance agents or financial advisors. This checklist will help the Personal Representative understand their duties:

Personal Representative: Notification – at your earliest convenience please notify:

- Contact the employer to obtain a final paycheck and any insurance.

- The deceased person's (Decedent) accountant, investment advisors, insurance agent and any other professionals.

- Notify the Social Security Administration at (800) 772-1213.

- If the Decedent was receiving veterans' benefits, call (800) 827-1000.

- The Defense Enrollment Eligibility Reporting System (DEERS) can be notified by calling (800) 538-9552.

- If the veteran is also a retiree, the Defense Finance and Accounting service should be notified by calling the Retiree Casualty Section of the

DFAS at (888) 332-7411. You can also file DFAS Form 9221 online using DFAS's Fast Form Option at <https://www.dfas.mil/retiredmilitary/forms.html>.

- If the veteran is also a current or retired federal civilian employee, the Office of Personnel Management should be notified by calling (888) 767-6738.
- If the veteran was enrolled in a VA-sponsored life insurance policy, call the VA at (800) 669-8477.
- If the veteran was also a retiree enrolled in the Servicemember's Group Life Insurance plan, call the VA at (800) 419-1473.
- Notify each of the retirement plans in which the Decedent had an interest.
- If no surviving spouse still lives at the Decedent's residence, file a change of address form with the post office as Personal Representative, indicating where the Decedent's mail should be sent.
- **Social Security Payment:** Social Security benefits are paid a month behind. Social Security regulations require that a person live an entire month to receive benefits for that month.

The estate is *not* entitled to keep the prior month's benefits scheduled to arrive in the next month, even though the person was alive for all but one day of that month. If that prior month's payment is made because Social Security was not notified promptly of the beneficiary's death, it will have to be returned. Be aware of these rules in case payment must be returned.

FEIN

Federal tax identification number for the estate will need to be obtained from the IRS. The law firm will obtain this on the Personal Representative's behalf once they sign the appropriate IRS document.

ESTATE CHECKING ACCOUNT

Once the estate tax identification number has been obtained, an estate checking account should be opened to receive all estate deposits and pay all estate bills (unless the estate is insolvent).

A detailed record of all estate transactions should be kept. No checks should be written on the estate account unless they are for the proper debts of the Decedent, for taxes owed by the Decedent or the estate, or for funeral or administration expenses.

The Personal Representative can be found personally liable if they prematurely pay or distribute estate assets and it turns out that there are not sufficient funds remaining to pay debts, taxes, or expenses.

The Personal Representative must not mix estate assets with personal assets. To avoid complications, title each asset belonging to the estate that comes into your possession in the name of the estate as follows:

Your Name, Personal Representative of the Estate of _____

NOTICE TO CREDITORS

A creditor has one year from the death of the Decedent to file a claim against the estate. This is why it is very important for the Personal Representative or if tasked to the law firm, to notify creditors.

Actual Notice: Actual notice is required to be sent directly to a creditor and include information regarding the commencement of the probate proceedings and the time period within which claims must be filed with the probate court. If notice is not provided, a creditor may come after the estate within the year causing many problems particularly if the estate was closed and the assets were already distributed to the heirs or beneficiaries.

Published Notice: Probate Court is required by Tennessee law to publish in a local newspaper a notice to creditors of the estate informing them they must come forward with their claims in order to be paid. Therefore, before the amount owing each credit of the estate can be paid, the creditor must file a claim with the Court. This applies even if you know there is an outstanding bill. Generally, if the creditor does not file the required claim within four (4) months, the creditor cannot enforce payment of the amounts due.

Creditors who file a claim timely (within the 4-months) must be paid if there are assets and there are no exceptions to the claim.

When a claim is received, the Court will send a copy of the claim to the Personal Representative and a copy to the law firm. An exception to the claim may be filed during that 30-day period following the claim filing.

The Personal Representative must make a diligent effort to identify anyone the Decedent owed money. The Personal Representative must review medical bills, credit card statements, bank records, and tax returns.

The priority of claims is as follows (meaning who gets paid first):

First: Costs of administration, including but not limited to premiums on the fiduciary bonds and reasonable compensation to the Personal Representative and the Personal Representative's attorney.

Second: Reasonable funeral and burial expenses.

Third: Taxes and assessments imposed by the federal or any state government or subdivision thereof and claims by the Bureau of TennCare (Medicaid).

Fourth: All other general creditors who filed a timely claim.

If the estate is insolvent, the law office will make the necessary notifications to the Court and direct the Personal Representative on the sale of real estate if real estate is owned by the Decedent.

DISTRIBUTIONS IN THE WILL

A Personal Representative has the discretion to make distributions in an estate prior to closing. However, any such distributions should be made thoughtfully and in keeping in mind any anticipated claims of creditors, claims of a spouse (if applicable), or expenses of administration. Making distributions prior to the close of the 4-month claims period is always risky. The law office will follow the mandatory distributions as listed above prior to making distributions to beneficiaries.

The Personal Representative is liable for any distributions made that prevent the follow of the priority of claims listed above or do not follow the Will.

EXPENSES OF THE PERSONAL REPRESENTATIVE

The Personal Representative can, of course, reimburse themselves or others if any funeral or similar expenses were advanced prior to the opening of the estate account.

ASSETS

All "probate assets" ("probate assets" are assets owned solely in the Decedent's name, that is, not jointly owned assets, and not assets that are payable to a designated person as the beneficiary) should be located, gathered and brought under the control of the and possession of the Personal Representative. If practical, estate assets such as bank accounts should be re-titled in the name of the estate and under the estate's tax identification number. Consult previous tax returns to help identify assets.

Real Estate: All the real estate must be located in addition to the Decedent's home. Search for property deeds, mortgage statements and insurance policies. Secure the property. It may be necessary to change the locks. Store valuable property such as expensive jewelry, art and weapons.

The law office will evaluate the Will to determine if the Personal Representative has the authority to sell the property. If not, all the beneficiaries must sign the real estate deed if the property is to be sold. If the Decedent died intestate (without a Will), all the legal heirs must sign the deed.

Personal Property - Cars, Boats, Motorcycles and Other Vehicles: Locate the registration and insurance documents to determine if the Decedent owned the vehicles in whole or in part. Do not drive the vehicles registered in the Decedent's name. Vehicles must be retitled and insured.

Small Business: If the Decedent owned a business, the law firm will need to value the business as of the date of death. This is performed by a CPA. A decision must be made whether to continue the business or to sell it.

If the business is an LLC or another type of entity that has an operating agreement, the agreement will have to be evaluated for how to proceed with transferring the decedent's share.

Mail: Read through the Decedent's mail and look for bank statements and brokerage statements.

Digital Assets: If the Decedent owned a computer or other electronic device including a smart phone, determine if there is a password list with the Decedent's valuable papers. Make a complete backup of the hard drive. The Personal Representative may use an external hard drive or flash drive. There may be very important financial information stored on the device. Additionally, there may be photos important to the family members.

VALUE OF ESTATE

If the Decedent had a Will, an inventory may have been waived, or all the beneficiaries/heirs at law may consent to waiving a formal inventory.

It is important to identify the assets and calculate the value of the estate. A list of all the Decedent's assets (including account or policy numbers, if applicable) and showing the fair market values of these assets as of the Decedent's date of death needs to be created. This would include any bank accounts, certificates of deposit, real estate, stocks, bonds, mutual funds, and other securities, pensions, annuities and other retirement assets, life insurance, automobiles, and other property of any nature whether

owned solely in the Decedent's name, jointly with another person, or payable to a designated beneficiary. Some assets may need to be formally appraised.

Discuss any appropriate issues regarding their valuation and/or administration with the law office prior to engaging a CPA.

SAFE DEPOSIT BOX

If the Decedent had a safe deposit box and the bank prepared an inventory of the box, the law office will need a copy of that inventory.

LIFE INSURANCE

Any life insurance payable on the Decedent's life will need to be applied for by the beneficiary of each such policy. The law office can provide assistance to the Personal Representative in filing claims on any life insurance policies. With respect to each life insurance policy, the beneficiary should request a Form 712 from the insurance company. A Form 712 is an official form from the insurance company showing the exact amount of the death benefit or other insurance proceeds.

UNCLAIMED LIFE INSURANCE BENEFITS

The Tennessee Department of Commerce and Insurance (TDCI) addresses the issue of unclaimed life insurance benefits in the state to take advantage of the National Association of Insurance Commissioner's Life Insurance Policy Locator that enables beneficiaries, executors, or legal representatives of a deceased person to track down the life insurance policies or annuity contracts of their family and friends who have passed away.

GIFTS

If the Decedent made any gifts during his or her life that were over the annual exemption amount to any individual person during any single year, information needs to be gathered concerning the date(s) of the gift(s), the name(s) of the recipient(s) of the gift(s) and the amount(s) of the gift(s). If any federal and/or gift tax returns were ever filed by the Decedent, copies of these returns will need to be gathered.

CREDIT CARDS

If the Decedent had any credit cards, those credit cards will need to be cancelled and each credit card company should be notified of the Decedent's death. The law firm may be able to negotiate a lower settlement payment.

TN INHERITANCE TAX

Tennessee inheritance tax does not apply to individuals who died after December 31, 2015.

FEDERAL INHERITANCE TAX

A federal estate tax return is also due nine months from the date of death if the entire estate exceeds \$12,060,000 (year 2022) for a single person. This means that if you die

in 2022, the federal government will not tax your estate on the first \$12,060,000 that you pass on.

DISCLAIMER OF ASSETS

Any decision regarding the disclaimer of assets by any beneficiary must be signed and filed by the date that is nine (9) months from the date of death. For a disclaimer to be valid, the recipient cannot receive the assets he or she chooses to disclaim, so we need to discuss as early as possible the issues concerning disclaimers.

FEDERAL INCOME TAX RETURN

The federal income tax return (Form 1040) and Tennessee income tax return, which will probably be a joint return with the Decedent's spouse, if the Decedent was married, for the final year of the Decedent's life needs to be filed. THIS INDIVIDUAL FEDERAL INCOME TAX DEADLINE IS APRIL 15th. At such time as the final income tax returns for the Decedent are filed, the law office will need copies. The Personal Representative is responsible to make an appointment with a CPA or bookkeeper to prepare these returns.

It may be necessary for a fiduciary income tax return (Form 1041) to be filed for the estate if the probate assets produce interest, dividends, rents or other income while the estate is open, but this can be determined later. This is another reason why it is essential to maintain complete and accurate records of all financial transactions regarding the estate.

BOND

If there is no Will or if the Will did not waive the need to have a bond, the Personal Representative may be required to purchase a bond in handling their duties. The law office will provide you with instructions. Bond can be waived if all beneficiaries or heirs at law consent to the Personal Representative serving without bond.

LETTERS

The Personal Representative will take their Oath that they will properly perform their duties as the Personal Representative of this estate to the best of their ability and the Clerk's Office will issue either Letters Testamentary or Letters of Administration. The Personal Representative will need these letters to open the estate bank account and in handling their duties as the representative of the estate.

CLOSING THE ESTATE

Once the creditors are paid and the assets are distributed, the law firm will close the estate. The attorney will file the remainder of the paperwork with the Court and then Personal Representative's duties will be completed.