

The Executor - An Estate's Representative

October 15, 2010

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As seen in the October 15th issue of *The State Journal*.

It has been said that the only certain things in life are death and taxes. Upon one's death, all the property and various things that one accumulates during their life must be passed to others. An Executor is the person chosen by the decedent in a Will to handle this transition. If a person dies intestate, that is, without a Will, then the personal representative will be called an Administrator. For purposes of this article, we will refer to either an Executor or Administrator as the Executor of an estate.

In West Virginia, every estate administration must go through five basic steps. The tasks that an Executor must accomplish to handle the estate administration process include finding and controlling all of the assets of the decedent, paying any debts, taxes and claims against the decedent's estate, and distributing the balance of the estate to the appropriate persons. The time frame for an estate administration in West Virginia is from six months to several years. However, most estates are administered in less than one year.

The first step in administering a decedent's estate is to present the decedent's Will for probate and qualify as Executor of the estate in the decedent's county of principal residence under the jurisdiction of the County Commission. West Virginia law mandates that a person having custody of a Will must deliver the Will to the clerk of the county commission or the executor named in the Will within thirty days of the testator's death. The Executor must then offer the Will for probate within a reasonable time. If a decedent dies without a Will, then there is a priority system as to who may qualify as the personal representative within the first thirty days after the decedent's death. After thirty days, any person may qualify as the personal representative.

Second, the Executor must prepare an inventory of the decedent's estate. The Executor must prepare an Appraisal of the Estate (for things owned by and/or titled in the decedent's name at death) and a Nonprobate Inventory of the Estate (for assets that pass to others without administration by virtue of titling and/or contract). In order to file the Appraisal and the Nonprobate Inventory, it is necessary to gather information concerning the decedent's real estate, tangible personal property, shares of corporate stock, money and any other assets the decedent owned at death. The Appraisal and Nonprobate Inventory must be filed within ninety days of the qualification of the Executor. Any Executor who fails to comply with this requirement, without reasonable cause, can be charged with a misdemeanor.

The third step in administering a decedent's estate is to pay the debts and administrative expenses of a decedent's estate. These include funeral expenses, fees for accountants and attorneys, Executor's commissions, and miscellaneous administrative expenses, such as utilities, medical expenses, and tax liabilities. An Executor is entitled to reasonable compensation in the form of a commission on the assets subject to his or her administration. The amount of the Executor's compensation is fixed by statute and can range from one percent to five percent of the value of the assets subject to administration.

Fourth, the Executor must file all tax returns on behalf of the decedent's estate and, where applicable, pay any taxes due. These tax returns include the decedent's final federal and State income tax returns and the federal and State fiduciary income tax returns. If applicable, an Executor must also file an estate tax return and gift tax returns. In addition, an Executor is required to file annual accountings itemizing the receipts, disbursements, and distributions of the estate.

The final step in administering a decedent's estate is to make a distribution of assets to the beneficiaries of the estate. Under West Virginia law, an Executor is not required to distribute the assets of a decedent's estate until the filing and approval of a final settlement of accounts and entry of an order discharging the

Executor. A complete final settlement of accounts may be waived by the beneficiaries of a decedent's estate and the Executor may file a short form settlement or waiver of final settlement.

In sum, when the inevitable happens, a decedent's assets and liabilities must be accounted for and the balance distributed to the decedent's beneficiaries in a timely and orderly fashion. The Executor is just the person for the job.