

Settling a Client's Estate: Identifying Assets and Debts, Critical Elections, Distributions to Beneficiaries

WEDNESDAY, DECEMBER 1, 2021, 1:00-2:50 pm Eastern

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Settling a Client's Estate: Identifying Assets and Debts, Critical Elections, Distributions to Beneficiaries

December 1, 2021

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The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Settling A Client's Estate

MATTHEW D. PINEDA, J.D., LL.M., LL.MLE





What situations are we considering today?

- A client has passed away and you are a trusted adviser for the family.
- Family members, heirs, and potential beneficiaries are looking to you for guidance.
- Do you know what the first steps to take would be?



Initial Considerations

- Did the client have estate planning documents?
- Some key documents at Client's Death: Last Will and Testament and/or Trusts
- Who are the beneficiaries?
- What are the assets?
- Will Probate be necessary?



Immediate Actions

- Identify Documents, Assets, and Beneficiaries
- Choose the best form of administration
- Consider estate timelines



Identify Documents, Assets, and Beneficiaries

- Look through decedent's paperwork to see if there are statements from creditors. This can be credit cards, car loans, phone bills, etc.
- Collect statements from financial institutions, life insurance policies, accounts information.
- Contact Social Security.

Identify Documents, Assets, and Beneficiaries

- Determine if there was a Will. If there was, secure the Original and begin to identify assets and beneficiaries. If one cannot be found, talk to beneficiaries about possible places a Will might be located or if they had ever heard of a Will being drafted.
- Speak to family members and other contacts to inform of death and about names and locations of possible beneficiaries.
- Secure the real property and assets.
- Deposit the last known Will with the Clerk of the Court having jurisdiction.

Locating Assets

- If the decedent had a Separate Writing the lists property, finding those items can be a good place to start. The attorney and PR can search the home together.
- Photos and video can be taken of the different items found in the home. Search through the Decedent's documents, mail, emails (if possible) to find bank accounts, credit card statements, deeds, brokerage account information, and life insurance policies.

Locating Assets

- Credit card and bank statements may be particularly helpful in that it may be possible to see the decedent's most recent purchases. This can give further clues as to what the assets of the decedent were.
- Search the decedent's bank to see if they had safety deposit boxes. See if the decedent had a storage unit. It can be helpful to see if the decedent had paperwork that had information regarding important passwords. This can be helpful in attaining access to digital assets. All of these locations and more can contain assets of the decedent or further hints to the location of the assets.



Common Assets and Locations

Assets

- Real Estate Deeds
- Bank Accounts
- Brokerage and Investment Accounts
- Homestead Property
- Vehicles
- Jewelry
- Digital Assets

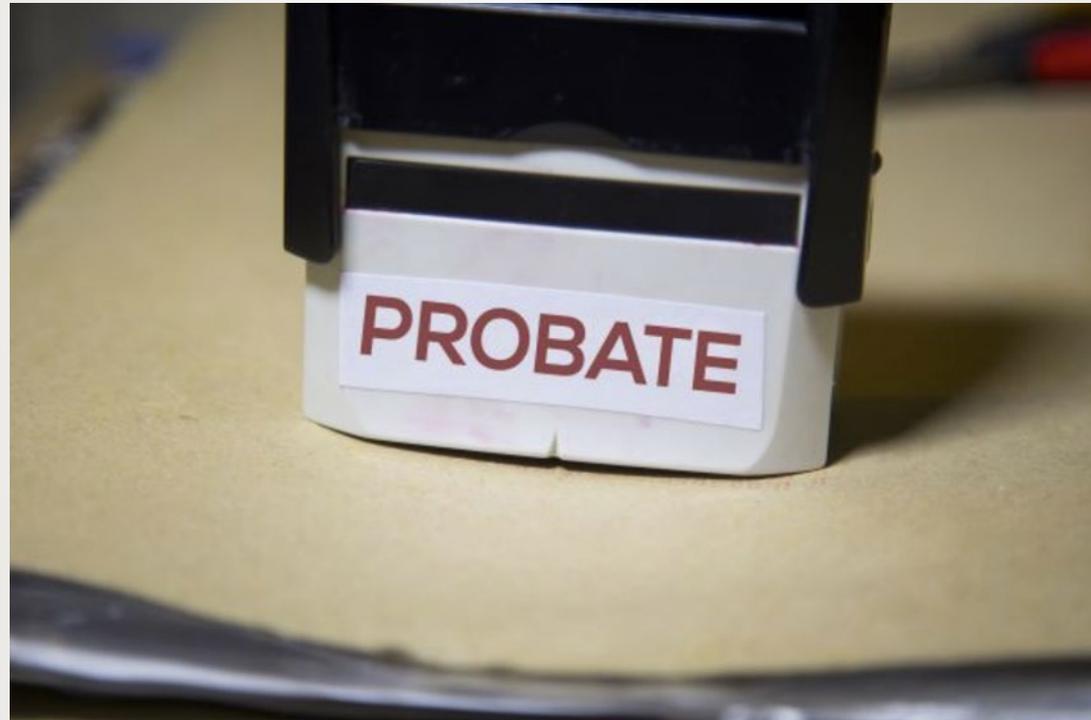


Common Assets and Locations

Locations

- Decedent's Mail
- Decedent's Home
- Vehicle Gloveboxes
- Storage Units
- Bank Safety Deposit Boxes
- Desk drawers and closets

Choosing the best form of administration





What is Probate?

- Probate is the legal process used to distribute a deceased person's estate to such person's heirs and designated beneficiaries, and to pay off any debt owed to the deceased person's creditors at the time of their death.
- Typically to determine how the estate assets are distributed you will look to either what is stated in the decedent's Last Will and Testament, if the decedent had one, or according to state law (intestate law) if there is no will.



You Don't Always Need a Probate

- If Client had a Trust based estate plan and all assets placed into Trust
- If all assets owned jointly
- Beneficiaries designated on retirement accounts and brokerage accounts
- Life Insurance Policies have beneficiaries named



What TYPE of Probate

- The type of administration to be used can depend on a number of factors.
- One first question is whether or not it has been more or less than two years since the decedent's death.
- Does the estate have known creditors?
- Are there assets in that will be included in the gross estate? (Probate vs. Non-Probate)
- Is there a known Last Will and Testament? Will a Personal Representative be necessary?
- What is the value of the probate estate?



Examples of Types of Probate

- Formal Administration
 - Summary Administration
 - Ancillary Administration
-
- Each will have its own requirements and timelines



Typical Estate Timeline if Probate Necessary

- Collection of documents and information (death certificate, funeral bills, wills, trusts, debts, etc.)
- Petition for Administration
- Appointment of Executor/Personal Representative and Letters of Administration
- Notice to Creditors
- (In Florida) Notice to Agency for Healthcare Administration



Typical Estate Timeline if Probate Necessary

- Filing of Inventory
- Petitions for Exempt Property (such as determination of Homestead)
- Final Accounting (unless waived)
- Determine if Estate Tax Due
- Petition for Discharge

Identifying Assets

- Find the assets and determine if they are probate or non-probate assets
- Non-probate assets can be passed on to the designated beneficiaries outside of a court process.
- One main step is separating the assets between probate vs. non-probate assets



What are probate assets?

- Generally probate is the legal process usually supervised by the local court where decedent's estate is properly distributed to heirs and designated beneficiaries.
- In general Probate Property will be distributed according to the Last Will & Testament if the decedent had one, or according to Florida's Intestacy Laws if the decedent did not have a Last Will and Testament.

What are probate assets?

- A probate asset is typically an asset that was solely owned by the decedent at the time of his or her death, an asset that was titled in the name of the decedent only, or an asset that does not have designated beneficiary to whom the asset will pass.
- These assets together make what is called the Probate Estate. This is specifically defined in Florida Statutes §731.201(14) “ ‘Estate’ means the property of a decedent that is the subject of administration.”
- It will be the responsibility of the Personal Representative named in the decedent’s Last Will & Testament, or the Personal Representative appointed if intestate, to open the Probate case and distribute the probate assets.



Examples of Probate Assets

- Real property that is titled solely in the decedent's name;
- Real property held as a tenant in common;
- Tangible Personal Property, which includes items such as jewelry, furniture, and automobiles;



Examples of Probate Assets

- Bank accounts that are solely in the decedent's name and are not a Transfer on Death Account;
- An interest in a partnership, corporation, or limited liability company (shares, membership percentages, etc.);
- Any life insurance policy or brokerage account that lists either the decedent or the estate as the beneficiary.

What are Non-Probate Assets?

- Generally this means assets that can be transferred without court supervision.
- This is an important distinction, because if an asset is a non-probate asset and is not subject to court supervision a person's Last Will & Testament will not control that asset's distribution.

Examples of Non-Probate Assets

- Property that is held in joint tenancy or as tenants by the entirety
- Bank or brokerage accounts held in joint tenancy or with payable on death (POD) or transfer on death (TOD) beneficiaries
- Property held in a trust
- Life insurance or brokerage accounts that list someone other than the decedent as the beneficiary
- Retirement accounts with named beneficiary

Why is determining “type” of asset important?

- Whether an asset is a probate or non-probate asset will determine how it can be distributed to a beneficiary
- Example two different Deeds, and how they can be distributed:

Prepared by and Return to:
JOHN KINGMAN KEATING
Town Square Title, Ltd.
250 East Colonial Drive, Suite 301
Orlando, Florida 32801
Telephone: 407-422-2234

Deed Doc Tax: \$3,283.70
Mortgage Doc Tax: \$0.00
Intangible Tax: \$0.00
Phil Diamond, Comptroller
Orange County, FL
Ret To: SIMPLIFILE LC

OP19002

PARCEL IDENTIFICATION NUMBER(S): 21-22-27-6099-03290

RECORDING INFORMATION ABOVE THIS LINE

WARRANTY DEED

THIS WARRANTY DEED is made and executed as of this 10th day of April, 2019, by Weekley Homes, LLC, a Delaware limited liability company (the "Grantor") with a mailing address of 225 S. Westmonte Drive, Suite 2000, Altamonte Springs, Florida 32714, to **John Stanton Smith and Brenda Ross Smith, husband and wife** (collectively the "Grantee") with a mailing address of 941 Allenhurst Street, Winter Garden, Florida 34787.

WITNESSETH: That the Grantor for and in consideration of the sum of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR RECORDING DATA

This Quit-Claim Deed, Executed this . 23rd day of MARCH . A.D. 1995 , by

PHOEBE L. DIXON, AN UNMARRIED PERSON

first party, to

PHOEBE L. DIXON AND MARY SUSAN DIXON, BOTH UNMARRIED PERSONS

whose post office address is 2929 ABBEY COURT, WINTER PARK, FLORIDA 32792

second party:

(Wherever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, That the said first party, for and in consideration of the sum of \$10.00 in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quit-claim unto the said second party forever, all the right, title, interest, claim and demand which the said first party has in and to the following described lot, piece or parcel of land, situate, lying and being in the County of ORANGE , State of FLORIDA , to-wit:



Life Insurance

- Beneficiary Designation is key.
- If there is a named beneficiary the life insurance company can give the funds directly to that individual.
- If there is no named beneficiary or a named beneficiary predeceased the client, then now these funds have to go through a probate process.

BENEFICIARY DESIGNATION FORM

CIGNA Life Insurance Company of New York
New York, NY

Employer Name _____

Employee Name _____ Employee Social Security # _____

Current Address _____ City _____ State _____ Zip _____

Home Phone _____

Work Phone _____

please enter all dates in mm/dd/yyyy format.

Primary and Contingent Beneficiaries – Unless you designate a percentage, proceeds are paid to primary surviving beneficiaries in equal shares. Proceeds are paid to contingent beneficiaries only when there are no surviving primary beneficiaries. If you designate contingent beneficiaries and do not designate percentages, proceeds are paid to the surviving contingent beneficiaries in equal shares. Unless otherwise provided, the share of a beneficiary who dies before the insured will be divided proportionately among the surviving beneficiaries in the respective category (primary or contingent).

Basic Term Life Insurance, CIGNA Life Insurance Company of New York - Policy No. _____				
Employee's Primary Beneficiary(ies):	Relationship to Employee	Social Security Number	Date of Birth	% (total must equal 100%)
Employee's Contingent Beneficiary(ies):	Relationship to Employee	Social Security Number	Date of Birth	% (total must equal 100%)
Voluntary Term Life Insurance, CIGNA Life Insurance Company of New York - Policy No. _____				
Employee's Primary Beneficiary(ies):	Relationship to Employee	Social Security Number	Date of Birth	% (total must equal 100%)
Employee's Contingent Beneficiary(ies):	Relationship to Employee	Social Security Number	Date of Birth	% (total must equal 100%)
Basic Accident Insurance, CIGNA Life Insurance Company of New York - Policy No. _____				
Employee's Primary Beneficiary(ies):	Relationship to Employee	Social Security Number	Date of Birth	% (total must equal 100%)
Employee's Contingent Beneficiary(ies):	Relationship to Employee	Social Security Number	Date of Birth	% (total must equal 100%)
Voluntary Accident Insurance, CIGNA Life Insurance Company of New York - Policy No. _____				



Retirement Accounts

- Includes IRAs, Pensions, 401(k), etc. that the decedent paid into prior to their death.
- These investment vehicles also allow for designated beneficiaries to be named.
- If there is a valid designated beneficiary named then the proceeds will be paid to said beneficiary outside of the probate process.

3. Beneficiary designation (continued)

ALL INFORMATION MUST BE COMPLETED.

Name of primary beneficiary(ies)	SSN/tax ID#	% share	Date of birth/trust	Relationship to owner	Name of custodian if beneficiary is a minor
				<input type="checkbox"/> Spouse <input type="checkbox"/> Other	
				<input type="checkbox"/> Spouse <input type="checkbox"/> Other	
				<input type="checkbox"/> Spouse <input type="checkbox"/> Other	
TOTAL:			(Must add up to 100%)		
Name of contingent beneficiary(ies)	SSN/tax ID#	% share	Date of birth/trust	Relationship to owner	Name of custodian if beneficiary is a minor
				<input type="checkbox"/> Spouse <input type="checkbox"/> Other	
				<input type="checkbox"/> Spouse <input type="checkbox"/> Other	
				<input type="checkbox"/> Spouse <input type="checkbox"/> Other	
TOTAL:			(Must add up to 100%)		

4. Spousal consent

Spousal consent is required if your spouse is not named as sole beneficiary and your account is a money purchase plan or profit-sharing plan. Spousal consent is also required if your spouse is not named as sole beneficiary and you reside in a community or marital property state. Your signature must be notarized.

As the spouse of the account owner named in Section 1, I hereby waive my right to be the sole primary beneficiary of this account. I understand that by waiving my right, account assets will be paid to the primary or contingent beneficiary(ies) listed on the death of my spouse. I hereby consent to the beneficiary designation(s) stated in Section 3.

SIGN HERE _____
Signature of spouse _____ Date (MMDDYYYY) _____

On _____, 20____, before me, _____, notary public, personally appeared

_____, who has satisfactorily identified him/herself as the signer of the above.

SIGN HERE _____
Notary signature _____ Affix notary stamp here

My commission expires _____.

5. Signature

The terms and conditions of this beneficiary designation are construed and administered according to the laws of the Commonwealth of Massachusetts. Any addition to, deletion from, or change to this form is void unless approved in writing by John Hancock Investments. Beneficiary designations become effective when delivered to and received by John Hancock Signature Services, Inc., and will remain in effect until we are notified otherwise in writing.

Each of the undersigned agrees to indemnify John Hancock Signature Services, Inc. and John Hancock Funds, LLC against any loss, claim, or expense (including reasonable attorney's fees) to the extent that any transfer effected pursuant to these instructions is alleged or found for any reason to have been invalid or ineffective, and transfer is subject to the condition that John Hancock Signature Services, Inc. and John Hancock Funds, LLC will be entitled to attach or debit the account of the beneficiary to the extent necessary to enforce their rights to this indemnity.

SIGN HERE _____
Signature of owner _____ Date (MMDDYYYY) _____

6. Mail

Please enclose and mail to:

Regular mail
John Hancock Signature Services, Inc.
P.O. Box 55913
Boston, MA 02205-5913

Express mail
John Hancock Signature Services, Inc.
Suite 55913
30 Dan Road
Canton, MA 02021

John Hancock Funds, LLC = Member FINRA, SIPC
601 Congress Street = Boston, MA 02210-2905 = 800-225-5291 = jhinvestments.com

NOT FDIC INSURED. MAY LOSE VALUE. NO BANK GUARANTEE. NOT INSURED BY ANY GOVERNMENT AGENCY.

Bank Accounts

- If a bank account was a joint account it will pass outside of the probate process to the other named account member. If a bank account was a transfer on death or pay on death (TOD or POD) then banking institution will transfer to the named beneficiary outside of the Probate Process.

Other Non-Probate Assets

- Assets funded into a trust can be distributed to trust beneficiaries by the substitute trustee outside of probate (check if probate assets can be reached by creditors in your state).
- Real Estate in Trust
- Buy-Sell Agreements for Business Entity interests may come into play where shares sold to business partners and family given cash compensation.
- Cryptocurrency – how was it held?

SETTLING A CLIENT'S ESTATE

Jarrett G. Roth, Esq.

- The Exciting Stuff!!!!
 - Expenses, Debts, and Cash Flow Considerations
 - Distributions and Accounting to Beneficiaries

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Expenses, Debts, and Cash Flow Considerations

- How close was the fiduciary to the Decedent?
 - Family
 - Friend
 - Attorney/CPA/Financial Advisor
- How large is the Estate?
 - Taxable v. Nontaxable
- Estate Fiduciary should not act as a portfolio manager
 - Avoid enormous risk and dangerous situations
 - Avoid concentrated positions
 - Cash is King
- What is the composition of the Estate?
 - Liquid assets vs. real estate?
 - Life Insurance, ITF, Totten Trusts, IRAs, Brokerage accounts, etc.?

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Expenses, Debts, and Cash Flow Considerations

- **EXPENSES – When to pay:**

- **Immediate-related to Administration of the Estate**

- Funeral Expenses
- Bond Premium
- Legal Fee Retainer
 - Surrogate's Court Filing Fees
- Final income taxes
- Estate taxes
- Mortgages/Property taxes

- **Longer Term-less related to the Administration of the Estate**

- Unsecured Creditor Claims
 - Credit cards
 - Nursing home
 - Medical expenses

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Expenses, Debts, and Cash Flow Considerations

- **PRIORITY of CLAIMS IN NY: SCPA 1811**

- Funeral Expenses
- Costs of Administering the estate
 - Legal Fees
 - Filing Fees
 - Fiduciary Commissions
 - Costs of marshaling assets
- Taxes
- Wage Claims
- All other unsecured Debt

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Expenses, Debts, and Cash Flow Considerations

- **CREDITOR CLAIMS**

- **Seven Month Claim Period in NY:**

- New York Surrogate's Court Procedure Act (SCPA) sections 1802 and 1803 govern creditor claims
 - Begins on the date letters were first issued
 - Letters must be issued for clock to start
 - Prelims and Temps included
 - Claims filed after the seven-month period may still be valid but will be unenforceable against the estate fiduciary
 - Claim has to be brought against beneficiaries/distributees of the estate.

- **Proper Form:**

- A statement of the facts upon which it is based and the amount
 - Affidavit of Claimant typically states
 - The amount of the claim is due
 - All payments, if any, have been properly credited to amount due
 - No known offsets, no evidence of indebtedness and no security interest, except as specifically described in the affidavit

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Expenses, Debts, and Cash Flow Considerations

• **CREDITOR CLAIMS CONT'D**

• **Proper Service of Claim(s):**

- Notice of claim and affidavit must be served on the fiduciary
 - Personal or by certified mail, return receipt requested
 - Clerk of Court when the fiduciary cannot be located after due diligence
 - Copy to counsel- Always!

• **Payment of Claim:**

- Fiduciary has 90 days to accept or reject the claim
 - If accepted, then paid eventually
 - If rejected, creditor can seek relief under SCPA 1809
 - Requires the filing of a petition and shifts burden on to fiduciary to explain why
The claim is not being paid.
 - Or file objections to formal accounting
 - Depends on fiduciary

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Distributions and Accounting to Beneficiaries

- Give me Money!!!!
 - **Advance Distributions:**
 - Make sure all claims and expenses are more than covered by reserve
 - Tangible personal property
 - Obtain partial Receipt & Release
 - Language must include ability to claw back and indemnification of Estate fiduciary
 - **Formal Accounting vs. Informal Accounting:**
 - **Informal Account**
 - Less expensive and quick
 - Summary of transactions of the estate
 - Supply bank statements, closing statements, etc.
 - Proposed distribution schedule and obtain Receipts & Releases
 - To be filed with the Court
 - **Formal Account**
 - More expensive and drawn out
 - Requires a Petition & Schedules to be filed with Surrogate's Court in their format
 - Citation **must** issue and jurisdiction must be obtained
 - Court appearance dates required
 - Final Decree discharges the fiduciary

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Distributions and Accounting to Beneficiaries

- **Beneficiary Considerations:**

- Who are the beneficiaries?
 - Family
 - Charity
- Contested vs. uncontested?
 - Disgruntled beneficiaries
 - Accounting to another estate
- Claims that need to be adjudicated
 - Insolvent estate
 - Rejected claims

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Distributions and Accounting to Beneficiaries

- **Advice to Estate Planning Clients:**
 - Keep records of your assets and liabilities
 - Show the proposed fiduciary “the draw”

- **Advice to Fiduciary Clients:**
 - Document everything
 - Overcommunicate
 - Delegate when possible
 - Prudent Investor Rule

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SETTLING A CLIENT'S ESTATE

Suzanne Thau, Esq.

- Filing and Reporting Obligations
- Key Documents
- Key Elections

Filing and Reporting Obligations

- Months 1 through 3:
 - **File Probate Petition** – In accord with relevant state laws.
 - **Begin appraisal process:**
 - Are there any assets that aren't readily saleable and require appraisal - artwork, jewelry, real estate, closely held business interests?
 - Any property located in a storage facility?
 - Any safe deposit box?
 - **Apply for EIN for estate using SS-4** (can be done online)

Filing and Reporting Obligations

- Months 6 through 9
 - **Continue to honor relevant Surrogate's Court filings**
 - **Remove estate tax lien on real estate**: Cannot sell real estate unless release of lien is obtained.
 - IRC 6324: provides that on the day someone dies a federal estate tax lien comes into existence. The lien attaches to all assets of the decedent's gross estate that are typically reported on Form 706 (US Estate Tax (and Generation-Skipping Transfer) Tax Return).
 - IRS Form 4422, Application for Certificate Discharging Property Subject to Estate Tax Lien
 - May also need state release of lien
 - New York: Form ET-117
 - **Distribute tangible items**: as directed by Will or trust
 - Obtain receipt and release from each beneficiary

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Filing and Reporting Obligations

- Months 9 through 12
 - Tax Filings: This is the key time when the Executor (usually the Executor's attorney on his behalf) must file an array of tax and other IRS forms and make partial distributions.
 - **Filing Thresholds**
 - **File Form 706 (US Estate Tax (and Generation-Skipping Transfer) Tax Return)**: This is the federal estate tax return and is due within 9 months of the decedent's death.
 - Snapshot of decedent's assets at death, along with summary of prior taxable gifts. It also reports the decedent's liabilities at death, along with a summary of post-death expenses. All of these can be deducted from the value of the taxable estate, thereby reducing any estate tax due.
 - **File Form 4768, Application for Extension of Time to File a Return and/or Pay US Estate (and Generation-Skipping Transfers) Taxes**
 - Allows Executor to apply for an automatic six month extension of time to file Form 706
 - DOES NOT EXTEND THE TIME TO PAY!
 - **Alternatives**: Form 706 NA (for a non-resident alien decedent), Form 706 QDT (US Estate Tax Return for Qualified Domestic Trust)
 - **Portability Election**:
 - An executor can only elect to transfer the DSUE amount to the surviving spouse if the Form 706 is filed timely, that is, within 9 months of the decedent's date of death or, if you have received an extension of time to file, before the 6-month extension period ends.
 - Executors who did not have a filing requirement under section 6018(a) but failed to timely file Form 706 to make the portability election may be eligible for an extension under Rev. Proc. 2017-34, 2017-26 I.R.B. 1282. Executors filing to elect portability may now file Form 706 on or before the second anniversary of the decedent's death.

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Filing and Reporting Obligations

- Months 9 through 12 (cont'd)
 - Tax Filings: This is the key time when the Executor (usually the Executor's attorney on his behalf) must file an array of tax and other IRS forms and make partial distributions.
 - **State Level Estate Taxes:** Several states impose state level estate taxes on top of the federal tax and have their own filing requirement.
 - New York: Form ET-706, New York Estate Tax Return
 - Top rate: 16% (vs 40% federal)
 - No portability for state purposes
 - **File decedent's final Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return**
 - Make sure to obtain any Form 709s decedent filed during life.
 - Did decedent make any gifts in the final year before his death?
 - Did decedent fail to report any gifts during lifetime? If gift tax returns have not been filed, the executor will need to scour the decedent's financial records, for a minimum of six taxable years preceding death, to determine whether the decedent made any gifts in excess of the annual exclusion, and consequently whether any delinquent gift tax returns should be filed.
 - **File Form 1041, US Income Tax Return for Estates and Trusts**
 - Depending on the fiscal year chosen for the estate, the initial fiscal year can be as short as the first month after the decedent's death.
 - Leads to choice of fiscal vs calendar year (discussed in more detail below)
 - Final Form 1041 is very important:
 - 2017 to 2026: Restricted period
 - After restricted period, excess deductions can be passed out to beneficiaries. Before 2026, minimize excess deductions. After 2026, think about the 2% floor.
 - **Final decedent's final Form 1040, US Individual Income Tax Return**
 - All income up to the date of death must be reported and all credits and deductions to which the decedent is entitled may be claimed.
 - Decide whether to take certain expenses on final Form 1040 or Form 1041.
 - Extend time to file final Form 1040 to coordinate with filing of first Form 1041 for estate to consider all angles and ensure best use of available deductions.

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Filing and Reporting Obligations

- Months 18 through 36
 - Request IRS closing letter (IRS Letter 627)
 - New process for obtaining an estate tax closing letter effective **October 28, 2021**
 - Must apply online at Pay.gov
 - \$67 user fee
 - Prepare final estate accounting
 - If all beneficiaries do not agree, then may need to file accounting with the Surrogate's Court
 - Calculate commissions
 - Prepare final distributions and related receipts and releases

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Key Documents

- Last Will and Testament
- Revocable Trust
- Beneficiary designations
 - Insurance
 - Retirement assets
- Form 712
 - Values life insurance and is often attached to Form 706
- Titles and property deeds (especially real estate)
- Digital logins and passwords
- Death certificate
 - Order extras!
- Federal and state income tax returns for decedent for 3 years preceding death
- Prior gift tax returns
- Estate tax return for pre-deceased spouse
- Closely held business interest?
 - Obtain corporate, LLC, or partnership documents
 - Business account statements

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Key Elections

- QTIP Election
 - Allows executor to claim marital deduction for property passing to spouse in trust
 - Clayton QTIP election
 - State only QTIP election: only available in limited circumstances
- S corp issues:
 - How long can an estate be an S corp shareholder?
 - Should trust be structured as a QSST or an ESBT?

Key Elections

- Selection of estate's taxable year: Match income with deductions!
 - Estate NOT required to report income and deductions on a calendar year. Estate's first year for income tax purposes can be less than 12 months and must end on the last day of the month.
 - Trust must report on calendar year for income tax purposes
 - Fiscal year can defer tax on income earned by the estate and give the beneficiaries time to plan for inclusion on their personal income tax returns.
- IRC 645 election (Qualified revocable trust):
 - Election to treat decedent's revocable trust as part of the decedent's estate for federal income tax purposes.
 - Permits revocable trusts to take advantage of rules available only to estates (fiscal year, certain charitable deduction benefits)
- Administration Expenses:
 - Can be deducted on either Form 706 or Form 1041, generally not both.
 - Considerations:
 - Is there enough income in the estate to benefit from a deduction?
 - Which beneficiaries will benefit from each choice?
 - Be careful when credit shelter is funded with formula clause.
 - Look at the tax rates to determine where to take the deductions. If a federal Form 706 is required to be filed, the deductions will likely be taken on the Form 706.

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Key Elections

- Income in respect of decedent – IRD Deduction:
 - Income owed to decedent at time he or she died.
 - If estate tax paid on this income, beneficiary may be able to claim a deduction on his or her income tax return for estate taxes paid.
- Alternate Valuation Date (IRC 2032):
 - Can elect to value assets for purposes of reporting on Form 706.
 - Allows Executor to value assets NOT on date of death, but 6 months from date of death.
 - Only available if the election decreases the gross estate and the federal estate taxes due.
- IRC 6166 Election:
 - Extends time to pay federal estate taxes if the estate has a closely held business interest.
 - Requirements:
 - The decedent must have been a U.S. citizen or resident at death.
 - An interest in a closely held business must comprise more than 35 percent of the decedent's adjusted gross estate.
 - The estate's personal representative must make the section 6166 election on a Form 706 Federal Estate Tax Return filed in a timely manner
 - Does require payment of interest. Pay interest for years and then taxes over 10 years. Compare cost of insurance to cover liquidity to interest calculation aspect of 6166 election.
- 65 Day Election

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