Book of the Dead

The Book of the Dead was an ancient Egyptian handbook for the recently deceased. I entitled this section a guidebook for the living, not the dead, but I love history and a reference to the ancient scrolls of the Egyptian that directed the steps of the dead through the perils of the dead, step by step, into the afterlife was too good to resist. The reference to the Handbook of the Recently Deceased is a reference to the modern version in the movie Beatlejuice. However, if I had named by part Handbook of the Recently Deceased, I would probably be sued by Hollywood for copyright infringement. I doubt Osiris will sue me because the Book of the Dead dated from 1500 BC so I am thinking it is in the public domain by now.

This guide is intended to assist the surviving spouse when the first spouse dies and/or surviving family members or beneficiaries when the second spouse dies. A guide is not able to predict every situation when either death occurs. However, the steps in this guide are likely necessary in all cases with nuances in some cases.

Three Important Issues to Consider Immediately

Is the Estate Taxable?

If the gross estate is large, i.e., the value of all of the assets of the deceased person to include the surviving spouse is larger than the estate tax credit of the state in which your property is located, currently two million in Washington state, then you should contact an attorney to see if there is a potential estate tax liability. An estate tax credit is the amount a state will allow to pass from the decedent to a heir without imposing an estate tax. For example, at the time of this writing, Washington State had an estate tax but allowed about two million to pass tax free. If the estate of a decedent was larger than two million, in some cases, a tax liability would incur.

If there is a Surviving Spouse, is He or She Ill?

If you are reading this at the occasion of the death of a family member and there is a surviving spouse, a probate might be necessary if the surviving spouse is currently or imminently in need of long-term care. The objective of the probate would be to create and fund a "Spousal Protection Trust." Such a trust is created when the first spouse has died and the surviving spouse is or might need assistance, has high long-term care costs or has a diagnosis of dementia or another disease or condition. The Personal Representative of the deceased spouse's estate will make this determination. In many cases, it is advisable to open a probate and fund the Spousal Protection trust even if the surviving spouse is aged, i.e., over the age of eighty (80) or, clearly, "frail". The objective is to divert the deceased spouse's estate to an asset protection trust for the benefit of the surviving spouse in such a way that the amount in the trust is not an asset of the surviving spouse for tax or long-term care purposes. Thus, the amount in the trust, will not be subject to Medicaid liens, spend downs or transfer penalties. The amount in the trust is also not part of the surviving spouse's estate for tax purposes.

Is a Trust Established for Other Family Members?

Every estate plan is different. If you are a child, attorney in fact under a Power of Attorney, a Trustee or Personal Representative of the estate, you should immediately determine if the estate plan creates a trust for any other family member other than the surviving spouse. In some cases, trusts are established for heirs who are underage or disabled. In other cases, trusts are established to protect family assets for the common good. If this estate plan contains such a trust, it should be set funded before any outright distributions are made.

Incapacity

Even the most basic incapacity plans can provide protections that you would otherwise forego. A good plan can save you and your loved ones from a variety of legal, financial, and personal problems. Every responsible adult should have at least a basic plan in place at all times.

An incapacity plan is not a single document. Rather, a good plan includes a variety of tools, each of which serves a different purpose. Though the pieces you include in your plan will depend on your needs and desires, you can expect an incapacity plan to include some, or all, of the following:

Documents Relevant to this Section:

Health Care Directive, also known as a "Living Will"

A Health Care Directive is a document that states what kind of health care you wish to receive, or refuse to receive, should you lose consciousness or capacity. A living will – a type of advance medical directive – only applies if you are alive but unable to make or communicate your wishes. Unlike a last will and testament, your living will has nothing to do with what happens to your property after you die.

Physician's Order on Life Sustaining Treatment (POLST)

Often included as a part of a living will, a Physician's Order on Life Sustaining Treatment (POLST can also be a separate document. This document states the conditions under which you refuse to accept resuscitative measures, such as cardiopulmonary respiration or CPR, that are performed after your heart stops beating or you stop breathing. Most people who choose to create a DNR are suffering from a terminal and incurable illness, or have a high risk of suffering serious complications that might arise from resuscitative measures.

Health Care Power of Attorney

Another kind of advance medical directive, a health care power of attorney (also known as a health care surrogate, health care proxy, or by similar terminology), is a document that designates someone to have the legal right to make medical choices on your behalf if you cannot make them on your own. Health care powers of attorney, when paired with a detailed living will, ensure your health care wishes are protected should you lose capacity. They can be made to take effect immediately, or to take effect only after you lose capacity.

Authorization to Release Health Records, also known as a "HIPAA Release"

A HIPAA release is a document that allows your physicians or health care providers to talk to your relatives, friends, or other people you select about otherwise confidential medical details. A HIPAA release is not the same as a health care power of attorney, as it does not name someone who will make choices for you. The release allows you to ensure that your family and loved ones can receive detailed information about your health and treatment when you are incapacitated, instead of being kept in the dark.

General Power of Attorney, also known as a "Durable Power of Attorney for Finances"

A durable power of attorney for finances allows you to choose someone who will have the legal authority to manage your financial affairs if and when you lose the ability to do so yourself. Like a health care power of attorney, the financial power of attorney can take effect immediately, or upon incapacity. Durable powers of attorney allow your chosen representative to, for example, use funds from your bank account to pay your bills when you are hospitalized or otherwise incapable.

Revocable Living Trust

A revocable living trust is a common tool used in estate planning. It is primarily designed to allow property to pass from you to your inheritors without the property going through the probate process. But, you can also use your revocable living trust as an incapacity planning tool. When you create the trust you choose a trustee who will manage the property the trust owns. You typically serve as your own trustee, but, should you become incapacitated, you can also choose a successor trustee who will take over the trust management responsibilities when you're not able to perform them. This ensures that the property the trust owns will be properly cared for should you lose capacity.

Steps to Take when Any Family Member Dies

Death of a family member is difficult. This estate plan is meant to make things easier by giving family members who survive step by step instructions to settle affairs and implement the wishes and estate plan of your loved one.

Burial or Cremation

Clearly, when a family member passes away, you must arrange for funeral and burial or cremation. If the family member has not completed the End of Life Planning documents provided in this plan, search the person's documents to find out whether there was a prepaid burial plan. If your family member has a prepaid burial plan, your job is easier. Simply call the company that issued the policy or plan and the company will walk you through the next steps to follow.

Often, the death of a loved one is very upsetting. When people are upset, they do not think clearly. You should ask a friend or family member to be present whenever you are being asked to make a decision, especially a financial decision, related to burial or cremation.

Prepare an Obituary.

An experienced funeral director can provide a variety of helpful services beyond the obvious ones, including making transportation arrangements, coordinating with other funeral directors (if, for example, the burial is to be in another city or state), notifying government agencies, preparing obituary notices, etc.

Obtain death certificates (usually from the funeral home). Get multiple copies; you'll need them for financial institutions, government agencies, and insurers.

Know the person's wishes

Know the location of the will, birth certificate, marriage and divorce certificates, Social Security information, life-insurance policies, financial documents, and keys to safe deposit box or home safe.

Ask the person's wishes about funeral arrangements, organ donation, and burial or cremation.

Make sure the person gives copies of the documents to his or her doctor and a few family members or friends. Take the documents to the hospital if the person is admitted

Gather All Important Documents.

The decedent's financial and other records must be gathered for the purposes of probating the estate and preparing the decedent's and the estate's income tax returns.

In searching for these and other important documents, check safe deposit boxes, desk drawers (both at work and at home), briefcases, lockers, safes, etc. Also, keep a careful eye on the decedent’s mail. Never throw out official-looking documents.

The following list includes most documents and pieces of information that are commonly considered important:

- Address books
- Automobile titles
- Bank statements
- Business records (if self-employed)
- Check register (current year)
- Contracts
- Funeral instructions
- Life insurance policies and annuities
- Notes payable
- Notes receivable
- Partnership agreements
- Past employment information
- Pension information
- Real property deeds
- Retirement account statements
- Securities statements
- Stock certificates
- Tax preparer's or accountant's name and address
- Tax return source documents (current year)
- Tax returns (last three years)
- Trust agreement
- Unpaid bills
- Will

Notify the Decedent's Attorney.

If the decedent had a will or owned property outside of a trust or joint tenancy arrangement, his or her estate will probably be subject to the legal proceeding known as "probate." Through probate, claims against the estate are settled, and the decedent's remaining property is distributed in accordance with the instructions contained in his or her will, all under the supervision of the probate court.

Though it is possible to handle a probate without the assistance of an attorney, people who are not familiar with the process will find it frustrating and very difficult. Even when the estate does not utilize the services of an attorney, you should at least contact the attorney who prepared the decedent's will, if for no other reason than to review any documents that the attorney may have in the decedent's file.

Contact Social Security.

If the decedent has paid into Social Security and accumulated the minimum number of work credits, survivor benefits can be paid to certain family members. These include widows, widowers, children, dependent parents and, in some cases, surviving divorced spouses.

If you were not receiving Social Security benefits when the decedent passed away, you should apply promptly. You can apply online, by phone (800-772-1213) or at any Social Security office.

If you were already receiving Social Security benefits on your spouse's record when he or she died, report the death to Social Security and they will change your payments to survivor benefits.

If you are already receiving Social Security benefits on your own record, you'll need to complete an application to receive survivor's benefits. A copy of your spouse's death certificate will be required.

If the Decedent Was a Veteran, Contact the Veterans Administration.

Veterans' pension and disability payments cease at death; amounts received after death must be returned to the Veterans Administration (VA). However, the surviving spouse may be eligible to receive a portion of those benefits. For additional information, contact the VA online or by phone at the Phoenix office (800-827-1000).

Contact Insurance Companies.

You will need to contact each insurance company that insured the decedent's life or provided endowment or annuity benefits to the decedent. Each company will have its own requirements for payment of death benefits, although all will require a certified copy of the death certificate. Some may also require you to submit the original policy to them before they will pay the death benefit, while others will instruct you to destroy the policy after the death benefit is paid.

Finally, if the decedent was named as the beneficiary of any policies that you own, you will need to contact those companies and request a "change of beneficiary" form.

Additional Companies to Contact.

Contact all banks, credit unions, brokerage companies or other companies where the decedent had accounts, investments or any other financial interest. Each will have certain requirements for collecting the funds owned by the decedent.

In Arizona, if the decedent owned over $75,000 in gross personal property or $100,000 in net real property at the time of his or her death (per 2013 legislation), it may be necessary to file a probate in

order to collect amounts owned by the decedent. If there is any question about the necessity of filing a probate, you should contact an attorney.

If the decedent was receiving retirement or pension benefits from a private company, you will need to contact the company providing those benefits. If the decedent was a union member, there may be death benefits available through the union.

If the decedent was a beneficiary of a trust or an heir of an estate, you should notify the trustee or personal representative, respectively, of the death.

Inventory Assets

Ascertain the existence of the decedent's assets and inventory them including the following:

- Bank accounts
- Stocks and bonds
- Life Insurance policies
- Retirement funds: IRA accounts, Annuities, 401K, Pension, and Profit Sharing
- Real estate
- Household goods, furniture and personal belongings as well as antiques, silver, jewelry, furs, stamp collections, or coin collections.
- Business interests – determine whether decedent owned an interest in any business.

Receivables and Death Benefits

Investigate other benefits that may be available to the estate, including: social security and veterans' benefits (see above), union death benefits, employee benefits such as accrued vacation pay, final wages, employee death benefits, reimbursements, refunds on insurance, canceled subscriptions, professional and trade associations, fraternity/sorority, school alumni, and automobile clubs. Unfortunately, government, employment, and membership organization benefits do not come automatically. You must apply for them within their timeframes.

Liabilities and Creditors

Ascertain the existence of the decedent's liabilities and list them including the following: Mortgages, Other secured obligations, Current household bills, Expenses of last illness, and Funeral expenses, etc. IMPORTANT: Discuss any payments you make from or for the estate with an attorney. Considerable liability for the personal representative could result if these payments are not handled properly. Also, beware of swindlers who send phony bills and overcharge for services.

Proof of Payment of Expenses by Family and Executors

Be sure to get and keep bills, invoices, receipts, and canceled checks for payments of any and all expenses. The personal representative appointed will need to supply the probate court with proof of payment.

Papers and Mail of Decedent

Do not throw out any documents such as life insurance policies and certificates, even if the policyholder stopped paying premiums. The policy may still be in force. In addition, mail and letters may be needed to prove payment or ownership of assets later.

Protect Assets

Be sure and keep the insurance going on the home and on any personal property so that these assets will be protected during the probate period.

Secure valuable tangible property.

This means anything you can touch, such as silverware, dishes, furniture, art work, etc. If property is passed around to family members before you have the opportunity to take an inventory, this will become a difficult, if not impossible, task. Also, there may have been specific provision for items of tangible property in the will.

Have someone watch your home (and the decedent's home) during services. Sadly, burglars have been known to read obituaries to find out when no one will be home.

Death Certificates

Order ten or more certified death certificates. Usually these can be obtained through the funeral home or the Washington State Department of Health. A certified death certificate will be needed in order to begin the probate process. You will need certified copies of death certificates to claim Social Security and insurance benefits, change ownership of joint property, to enter safe deposit boxes and to file tax returns. Photocopies are often not acceptable. Here is the website for the Washington State Department of Health. http://www.doh.wa.gov/LicensesPermitsandCertificates/BirthDeathMarriageandDivorce/OrderCertificates

Taxes

There will be tax concerns including filing requirements, communicating with federal and state tax authorities, and observing deadlines. Due to the extensive subject matter, please consult an estates attorney for more information. However, certain relevant tax returns are:

- Decedent's Final Income Tax Return
- Gift Tax Returns
- Federal Estate Tax Return
- Generation-skipping Transfer Tax Returns
- State Inheritance and Estate Tax Returns
- Fiduciary Tax Returns

The estate plan

After the initial steps have been taken after the death of a loved one are completed, it is time to implement the estate plan.

The estate plan consists of several documents and is designed to be flexible. The plan depends on whether the surviving spouse is in need of long-term care or may be in the future. This is a critical decision point.

Is the surviving spouse healthy?

If the surviving spouse is not in good health and there is indication that the surviving spouse will need care at home or in a care community, then an asset protection trust should be established for the surviving spouse so that assets are not unnecessarily depleted on his or her care.

Steps to Establish a Spousal Protection Trust, i.e., Supplemental Needs Trust

The Spousal Protection Trust can be found in the deceased spouse's Last Will and Testament. The Spousal Protection Trust must be established in a probate. Thus, you can call my office at (253) 272-1904 or another probate attorney.

Probate is a court procedure that requires a filing fee and certain actions to be taken. In most cases, hiring an attorney to handle the probate is wise because he or she will know what steps to take to complete it.

PLEASE NOTE: The Spousal Protection Trust is only set up if the surviving spouse is ill. Thus, the Personal Representative is not the person who will be responsible for settling the estate of the deceased spouse and setting up the Spousal Protection Trust.

When the estate plan was signed, a person was designated as Personal Representatives of the estate in the Last Will and Testament.

If the surviving spouse is healthy, then read the directions in the Living Trust and Last Will and Testament. When this estate plan was established, it was thought that there was at least a possibility that the deceased spouse would have an estate over the taxable amount for either Washington State or Federal estate taxes. When the estate plan was signed, the amount was roughly two million for Washington State estate tax and five million for federal estate taxes.

Thus, it is very important that all assets are counted and the total gross estate is determined. If the gross estate is over two million, then determine whether you should fund a different kind of trust. This trust is called a "Credit Shelter Trust" but referred to as a "Spousal Support Trust." The purpose of the trust is to preserve the deceased spouse's estate tax credit by re-directing the deceased spouse's estate to an irrevocable trust that does not count as the asset of the surviving spouse. If all goes well, the estate of both the deceased spouse and the surviving spouse is below the state and federal credit amounts.

To make this happen, however, the surviving spouse will need to "disclaim" the amount. You should check with my office or another attorney on the amount to disclaim and the steps to properly fund this Credit Shelter Trust. However, the idea of a disclaimer is to give the surviving spouse the ability to decide what he or she wants to do. Is the estate taxable? If it is, does the survivor want to decide to take all of the deceased spouse's estate or designate all or a portion of it to redirect to a tax saving trust. To do this, the survivor simply signs the disclaimer which means she is in essence saying she does not want the inheritance outright. The deceased spouse's estate plan already has a provision in it to create this Credit Shelter Trust and, upon disclaimer, is funded. Voila!

Setting up a Credit Shelter or Spousal Protection Trust at a bank or financial institution is another matter. Each bank or financial institution is different and they all seem to have their own rules about these types of accounts.

Generally, the bank or financial institution will need the following:

> The pages describing the Trust, including the formal name of the Trust, Grantors and Trustees
>
> The notarized signature page with Grantor and Trustee signatures – in some states, there may be a separate page completed by the notary
>
> Any amendments to the original Trust
>
> Pages with Trustee powers and provisions related to incapacity or death of a Trustee
>
> Page listing the beneficiaries who will receive the funds if the Grantor of the Trust passes away
>
> Also include the following documents if anyone named as a Trustee or beneficiary is deceased:
>
>> A copy of the death certificate
>>
>> For Testamentary Trusts, provide the cover page of the Will, any portions describing the Trust, signature page and notary page along with the probate court's order appointing the Personal Representative and the "Letters Testamentary" that the Court issued. Letters Testamentary authorize the Personal Representative to act on behalf of the estate of the deceased spouse.

How to Decide the Next Step

This Plan is based upon the premise that long-term care costs can erode wealth unnecessarily. When the first spouse dies, there is an opportunity to protect the assets of the spouse who has just died from these costs. That opportunity is to fund a Spousal Protection Trust, also commonly referred to as a "Supplemental Needs Trust." The purpose of the trust is to hold the assets of the deceased spouse so these assets are not subject to spend down or government recovery in the event the surviving spouse needs expensive care.

Documents Relevant to this Step

The following documents are necessary to implement this section:

Last Will and Testament
The Last Will and Testament of the deceased spouse. The original can be found in the box.

The Certificate of Trust
This document is a summary of the Trust and is presented to financial institutions or other parties to establish the trust without need of the original trust document. The Certification of Trust can be found in the box.

Living Trust and Addendums, if any

The Living Trust Agreement and any addendums if addendums were included. These documents are located in this section.

Funding Instructions

These instructions describe the steps to take to fund the Revocable Living Trust.

Identify the Decision Makers

The Plan is complex in certain ways because it is flexible. Depending on the situation at the time of the first death, the assets of the decedent will go in different possible directions. There is some complexity because different legal devices will govern how the assets are passed along. One possibility is that the surviving spouse needs long-term care and the Personal Representative of the estate of the deceased spouse will open a probate and establish a Spousal Protection Trust for the benefit of the surviving spouse.

If the surviving spouse is well, i.e., healthy and there is no likelihood of imminent medical costs that are unreimbursed, then the Last Will and Testament will sit in its box, the Personal Representative will have no role, and the assets of the deceased spouse will pass by two additional types of legal documents. The first is a community property agreement and the second is a living trust agreement. The decision maker in such a case will be the surviving spouse.

Please remember and let me emphasize, if the surviving spouse is in need of care and a Spousal Protection Trust will be funded, the surviving spouse is not allowed to be the Personal Representative. The Last Will and Testament says as much and the law is clear on this point.

There are actually two agreements. One is called “Agreement as to Disposition and Status of Property Upon Death of First Spouse” and the other is “Community Property Agreement.” Both of these agreements, under Washington Law, allow the assets of the deceased spouse to vest in the name of the well spouse. However, these constitute legally binding contracts that require the surviving spouse to then transfer assets of the deceased spouse to a Living Trust and to follow the rules laid out for the management of the assets. Each case is different and so it is important to understand the Plan as it exists within the Living Trust. For example, if the estate of the couple is large, the Living Trust may provide the option or the requirement to fund an irrevocable tax savings trust.

In summary, the decision makers vary depending upon the facts at the first death. In many cases, the Personal Representative, usually a child, has been helping for a long time prior and he or she knows the situation of the parents well. In such a case, the choices are easier. However, in any case, just identify

and contact the Personal Representative first if there is a question as to the status of the surviving spouse. This brings me to the next issue.

Determine Status of Surviving Spouse

Is the surviving spouse currently receiving home care or resides in a care community such as an Assisted Living Facility, Adult Family Home or Nursing Home? If so, then it is highly advisable to choose the Spousal Protection Trust option. Under these circumstances, the surviving spouse is already spending money on care and, likely it will only get worse.

Has surviving spouse been determined to be disabled by Social Security Administration? Many disabled people do not incur high medical expenses. However, make a realistic determination of the possibility of care costs in the future. Factor in the surviving spouse's age and overall medical picture. If he or she is having difficulty and needs assistance with performing common activities of daily living, then it is likely care will soon be necessary and funding a spousal protection trust is advisable.

Even if the surviving spouse is independent and doing well, are there sufficient assets owned by the surviving spouse to make funding a Spousal Protection Trust a smart move? Often, the surviving spouse is over the age of eighty (80). There is no debt in the estate and the surviving spouse has very little recurring expenses. If a Spousal Protection Trust was funded, trust assets are available to pay for the surviving spouse's expenses to the extent that these payments do not jeopardize existing or future long-term care benefits. If the assets owned by the surviving spouse are adequate to pay his or her reasonable expenses, then it is often prudent to fund a Spousal Protection Trust because the assets held by the Trust constitute a nest egg, i.e., a protected pot of money that is not considered the assets of the surviving spouse and, therefore, protected from creditors and Medicaid spend down rules.

The flow chart provided is a graphical representation of the two possible directions to take when the first spouse dies. The decision point is the simply the health and welfare of the surviving spouse. If the surviving spouse is ill, i.e., needs long-term care services, then the flow chart depicts the probate process to set up the Spousal Protection Trust. If he or she is not well, then the probate avoidance trust, i.e., the Revocable Living Trust takes over. Both choices are described below.

If Asset Protection from Long-Term Care Costs is Required, Open a Probate

The Last Will and Testament of the spouse who died, contains all the provisions you need to set up the Spousal Protection Trust. However, it requires a court procedure called probate. A probate is court procedure. During the procedure, the Last Will and Testament is filed with the Court and the probate judge will appoint the designated Personal Representative. The Personal Representative will then be responsible for setting up the Spousal Protection Trust.

The following is a brief description of the process. In most cases, you will need to contact an attorney who practices in the area or probate to start the probate. They will walk you through the steps.

Introduction

After an individual's death, his or her assets will be gathered, business affairs settled, debts paid, necessary tax returns filed, and assets distributed as the deceased individual (generally referred to as the "decedent") directed. These activities generally will be conducted on behalf of the decedent by a person acting in a fiduciary capacity, either as executor (in some states called a personal representative) or as trustee, depending upon how the decedent held his or her property.

As a first step, it is helpful to know the meaning of a few common terms:

- Fiduciary - An individual or bank or trust company that acts for the benefit of another. Trustees, executors, and personal representatives are all fiduciaries.

- Grantor - (Also called "settlor" or "trustor") An individual who transfers property to a trustee to hold or own subject to the terms of the trust agreement setting forth your wishes. For income tax purposes the same term is used to mean the person who is taxed on the income from the trust. Confusing, but different concepts.

- Testator - A person who has made a valid will (a woman is sometimes called a "testatrix").

- Beneficiary - A person for whose benefit a will or trust was made; the person who is to receive property, either outright or in trust, now or later.

- Trustee - An individual or bank or trust company that holds legal title to property for the benefit of another and acts according to the terms of the trust. This can be confusing in that you can sometimes be both a trustee and a beneficiary of the same lifetime (inter-vivos) trust you established or a trust established by someone else for you at their death (testamentary trust).

- Executor - (Also called "personal representative;" a woman is sometimes called an "executrix"). An individual or bank or trust company that settles the estate of a testator according to the terms of the will, or if there is no will in accordance with the laws of the decedent's estate (intestacy), although a person acting in intestacy may be called by a different name, such as administrator.

- Principal and Income - Respectively, the property or capital of an estate or trust and the returns from the property, such as interest, dividends, rents, etc. In some cases, gain resulting from appreciation in value may also be income.

Other defined terms may be found in our Glossary.

As a general rule, the administration of an estate or trust after an individual has died requires the fiduciary to address certain routine issues and follow several standard steps to distribute the decedent's assets in accordance with his or her wishes. These guidelines focus on activities that occur in an estate or trust immediately after the individual has died.

Understanding the Will

It is very important to read and understand the will or trust so that you will know who the beneficiaries are, what they are to receive and when, and who, if any, your co-fiduciaries are.

Does the will give everything outright, or does it create new trusts that may continue for several years? Does a trust mandate certain distributions ("All income earned each year is to be paid to my wife, Nancy") or does it leave this to the trustee's discretion ("My trustee shall distribute such income as she

believes is necessary for the education and support of my son, Alan, until he reaches age 25")? The document often imparts important directions to the fiduciary, such as which assets should be used to pay taxes and expenses. The document will usually list the fiduciary's powers in some detail.

Most fiduciaries retain an attorney who specializes in the area of trusts and estates to assist them in performing their duties properly. An attorney's advice is very helpful in ensuring that you understand what the will or trust and applicable state law provide. For example, at an initial meeting it is common for the attorney to review step by step many of the key provisions of the will or trust (or both) so that you will understand your role. Be mindful that if you accept the appointment to serve as an executor or trustee, you will be held responsible for understanding and implementing the terms of the trust or will.

Managing Estate Assets

It is the fiduciary's responsibility to take control of (marshal) all assets comprising an estate or trust. Especially when a fiduciary assumes office at the grantor's or testator's death, it is crucial to secure and value all assets as soon as possible. Some assets, such as brokerage accounts, may be accessed immediately once certain prerequisites are met. Typical prerequisites are an executor obtaining formal authorization, sometimes referred to as Letters Testamentary, from the court and producing a death certificate. Other assets, such as insurance, may have to be applied for by filing a claim. The usual practice is to engage a professional appraiser to value the decedent's tangible property, such as household furniture, automobiles, jewelry, artwork, and collectibles. Depending on the nature and value of the property, this may be a routine activity, but you may need the services of a specialist appraiser if, for example, the decedent had rare or unusual items or was a serious collector. Real estate, whether residential or commercial, and any business interests also must be valued. Besides providing a valuation for assets that may be reported on a court-required inventory or on the state or federal estate tax return, the appraisal can help the fiduciary gauge whether the decedent's insurance coverage on the assets is sufficient. Appropriate insurance should be maintained throughout the fiduciary's tenure. The fiduciary also must value financial assets, including bank and securities accounts. Bear in mind that for federal estate tax returns for estates that do not owe any federal estate tax, certain estimates are permitted. This might lessen the appraisal costs that must be incurred.

Handling Debts and Expenses

It is the fiduciary's duty to determine when bills unpaid at death, and expenses incurred in the administration of the estate, should be paid, and then pay them or notify creditors of temporary delay. In some cases the estate may be harmed if certain bills, such as property or casualty insurance bills or real estate taxes, are not paid promptly. Most states require a written notice to any known or reasonably ascertainable creditors. While most bills will present no problem, it is wise to consult an attorney in unusual circumstances, as the fiduciary can be held personally liable for improperly spending estate or trust assets or for failing to protect the estate assets properly, such as by maintaining adequate insurance coverage.

The fiduciary may be responsible for filing a number of tax returns. These tax returns include the final income tax return for the year of the decedent's death, a gift or generation-skipping tax return for the current year, if needed, and prior years' returns that may be on extension. It is not uncommon for a

decedent who was ill for the last year or years of his or her life to have missed filing returns. The only way to be certain is to investigate. In addition, if the value of the estate (whether under a will or trust) before deductions exceeds the amount sheltered by the estate tax exemption amount, which is $5 million inflation adjusted ($5.25 million in 2013), a federal estate tax return will need to be filed. Even if the value of the estate does not exceed the estate tax exemption amount, a federal estate tax return still may need to be filed. Under the concept of portability, if the decedent is survived by a spouse and he or she intends to use any estate tax exemption the deceased spouse did not use, an estate tax return must be filed.

Since the estate or trust is a taxpayer in its own right, a new tax identification number must be obtained and a fiduciary income tax return must be filed for the estate or trust. A tax identification number can be obtained online from the IRS website. You cannot use the decedent's social security number for the estate or any trusts that exist following the decedent's death.

It is important to note for income tax planning that the estate or trust and its beneficiaries may not be in the same income tax brackets. Thus, timing of certain distributions can save money for all concerned. Caution also should be exercised because trusts and estates are subject to different rules that can be quite complex and can reach the highest tax rates at very low levels of income. Some tax return preparers and accountants specialize in preparing such fiduciary income tax returns and can be very helpful. They are familiar with the filing deadlines, will be able to determine whether the estate or trust must pay estimated taxes quarterly, and may be able to help you plan distributions or other steps to reduce tax costs.

Most expenses that a fiduciary incurs in the administration of the estate or trust are properly payable from the decedent's assets. These include funeral expenses, appraisal fees, attorney's and accountant's fees, and insurance premiums. Careful records should be kept, and receipts should always be obtained. If any expenses are payable to you or someone related to you, consult with an attorney about any special precautions that should be taken.

Funding the Bequests

Wills and trusts often provide for specific gifts of cash ("I give my niece $50,000 if she survives me") or property ("I give my grandfather clock to my granddaughter, Nina") before the balance of the property, or residue, is distributed. The residue may be distributed outright or in further trust, such as a trust for a surviving spouse or a trust for minor children. Be sure that all debts, taxes, and expenses are paid or provided for before distributing any property to beneficiaries because you may be held personally liable if insufficient assets do not remain to meet estate expenses. Although it is usual to obtain a receipt and refunding agreement from the beneficiary that states that he or she agrees to refund any excess distribution made in error by the fiduciary, as a practical matter it is often difficult to retrieve such funds. In some states, you will need court approval before any distributions may be made. Where distributions are made to ongoing trusts or according to a formula described in the will or trust, it is best to consult an attorney to be sure the funding is completed properly. Tax consequences of a distribution sometimes can be surprising, so careful planning is important.

Trust Administration

Trusts are designed to distinguish between income and principal. Many trusts, especially older ones, provide for income to be distributed to one person at one time and principal to be distributed to that same person a different time or to another person. For example, many trusts for a surviving spouse provide that all income must be paid to the spouse, but provide for payments of principal (corpus) to the spouse only in limited circumstances, such as a medical emergency. At the surviving spouse's death, the remaining principal may be paid to the decedent's children, to charity, or to other beneficiaries. Income payments and principal distributions can be made in cash, or at the trustee's discretion, by distributing securities as well as cash. Never make assumptions, as the terms of every will and trust differ greatly. There is no such thing as a “standard” distribution provision.

Unless a fiduciary has financial experience, he or she should seek professional advice regarding the investment of trust assets. In addition to investing for good investment results, the fiduciary should invest within the applicable state’s prudent investor rule that governs the trust or estate and with careful consideration of the terms of the will or trust, which may modify the otherwise applicable state law rules. A skilled investment advisor can help the fiduciary decide how to invest, what assets to sell to produce cash for expenses, taxes or outright gifts of cash, and how to minimize income and capital gains taxes. Simply maintaining the investments that the decedent owned will not be a defense if an heir claims you did not invest wisely or violated the law governing trust investments. In all events, it is important to have a written investment policy statement stating what investment goals are being pursued.

During the period of administration, the fiduciary must provide an annual income tax statement (called a Schedule K-1) to each beneficiary who is taxable on any income earned by the trust. The fiduciary also must file an income tax return for the trust annually. The fiduciary can be held personally liable for interest and penalties if the income tax return is not filed and the tax paid by the due date, generally April 15th.

Closing the Estate

Estates may be closed when the executor has paid all debts, expenses, and taxes, has received tax clearances from the IRS and the state, and has distributed all assets on hand. Trusts terminate when an event described in the document, such as the death of a beneficiary, or a date described in the document, such as the date the beneficiary attains a stated age, occurs. The fiduciary is given a reasonable period of time thereafter to make the actual distributions. Some states require a petition to be filed in court before the assets are distributed and the estate or trust closed. When such a formal proceeding is not required, it is nevertheless good practice to require all beneficiaries to sign a document, prepared by an attorney, in which they approve of your actions as fiduciary and acknowledge receipt of assets due them. This document protects the fiduciary from later claims by a beneficiary. These formalities are recommended even when the other heirs are relatives, as that alone is never an assurance that one of them will not have an issue and pursue a legal claim against you. Finally, a final income tax return must be filed and a reserve kept back for any due, but unpaid, taxes or estate expenses.

Common Questions

How do I title (own) bank and other accounts?

Each bank, trust company or investment firm may have its own format, but generally you may use, for a trust, "Alice Carroll, Trustee, Lewis Carroll Trust dated January 19, 1998," or, in a shorthand version, "Alice Carroll, Trustee under agreement dated January 19, 1998." For an estate, you should use "Alice Carroll, Executor, Estate of Lewis Carroll, Deceased."

How do I sign my name in a fiduciary capacity?

An executor signs: "Alice Carroll, Executor (or Personal Representative) of the Estate of Lewis Carroll, Deceased". A trustee signs: "Alice Carroll, Trustee"

Where do I hold the estate or trust assets?

You should open an investment account with a bank, trust company, or brokerage company in the name of the estate or trust. All expenses and disbursements must be made from these accounts, and you should receive regular statements.

How (and how much) do I get paid?

Because being a fiduciary is time-consuming and is often difficult, it is appropriate to be paid for your services. The will or trust may set forth the compensation to which you are entitled. If the document does not, many states either provide a fixed schedule of fees or allow "reasonable" compensation, which usually takes into account the size of the estate, the complexity involved, and the time spent by the fiduciary. Executor's or trustee's fees are taxable compensation to you. Several states do not permit you to pay your own compensation without a court order, so ask your attorney before you write yourself a check. Many fiduciaries in the same family as the decedent are quick to waive fees. Before doing this, however, consult with the attorney for the estate and be certain you understand the full scope of your duties and any ramifications of waiver.

What if a beneficiary complains?

Even professional fiduciaries, such as trust companies, receive complaints from a beneficiary from time to time. The best way to deal with them is to do your best to avoid them in the first place by following the guidelines set forth in these FAQs and consulting with an attorney experienced in estate administration. Many complaints arise because beneficiaries are not kept up to date about the administration of the trust or estate. Frequent communication with beneficiaries is a must. The best approach in all instances is to be proactive by communicating throughout the estate or trust administration process and handling all matters with appropriate formality. If a complaint involves more than routine issues, consult with an attorney who specializes in trust and estate matters.

Can I be sued or be held personally liable?

Your errors or mismanagement of a trust or estate can subject you to personal liability. Common pitfalls include not paying taxes or filing returns on time, improper investment choices (whether too conservative, too speculative, or favoring one beneficiary over another), self-dealing (buying assets for yourself or a family member from the estate or trust, whether at market price), or allowing property or casualty insurance to lapse, resulting in a loss to the estate or trust. Your best protection is to get good professional advice as early as possible in the process, communicate regularly with the beneficiaries, treat everything with appropriate formalities as if you were not a related party (even if you are), and fully document your actions and decisions.

How am I discharged as fiduciary at the end of the administration? What if I want to resign?

Whether you stop acting as a fiduciary because the estate or trust has terminated or you wish to resign before the conclusion of your administration, you must be discharged, either by the local court or by the beneficiaries. In some states, discharge is a formal process that involves the preparation of an accounting. In other states, you can be discharged with the use of a relatively simple document signed by the beneficiaries. If you are resigning prior to the conclusion of your administration, check the will or trust document to see who succeeds you as fiduciary. If no successor is named, you may need a court proceeding to appoint a successor before you can be discharged.

If Asset Protection from Long-Term Care Costs is not an Issue, then Surviving Spouse Should Follow the Provisions in the Agreements and Fund a Living Trust

If an asset protection trust is not an objective, then the assets of the well spouse should be transferred into the Living Trust so that there is no need for probate when the second spouse dies. The good news is, if there is no need to fund a Spousal Protection Trust, there is no need to open a probate at all when the first spouse dies using the Community Property Agreement and the Living Trust will avoid probate when the second spouse dies as well. That is the objective – to make estate transfer as easy and as painless as possible.

The first step is to find the Agreements and the Living Trust Agreement. The first contract is the "Agreement as to Disposition and Status of Property Upon Death of First Spouse." That Agreement lists the property of each spouse and describes how these assets are to pass. Remember, this Agreement is only effective if there is no reason to transfer assets by the Last Will and Testament of the first spouse to die as described above and repeatedly throughout the Plan.

I have also included a document called Funding Instructions. These instructions describe the steps necessary to fund the Revocable Living Trust when the First Spouse has died.

How to Decide the Next Step

Most people have little experience dealing with what happens after their loved one dies and they have been named as the successor Trustee who will be in charge of settling their loved one's Revocable Living Trust and/or a Spousal Protection Trust. The purpose of this guide is to provide a general overview of the six steps required to settle and then terminate a Revocable Living Trust and/or a Spousal Protection Trust after the Trustmaker dies.

Documents Relevant to this Step

The following documents are necessary to implement this section:

> **Last Will and Testament**
> The Last Will and Testament of the deceased spouse. The original can be found in the box.
>
> **Living Trust and Addendums, if any**

The Living Trust Agreement and any addendums if addendums were included. These documents are located in this section.

Family Trusts, if any

In some cases, the estate plan of the last spouse to die will direct that inheritances are paid out to beneficiaries in trust rather than outright. If so, look to see if a separate trust agreement has been established for heirs such as a supplemental needs trust or even a generic family trust.

Step One: Gather and Read all Estate Planning Documents

The first step in settling a Revocable Living Trust and/or a Spousal Protection Trust is to locate all of the decedent's original estate planning documents and other important papers. Any original estate planning document that might be recorded with the Recorder's office of the Court, should be located in the box of documents provided after the documents were signed. Other documents may be found in this notebook.

Aside from locating the original Revocable Living Trust and/or a Spousal Protection Trust agreement and any trust amendments, you'll also need to locate the decedent's original Pour-Over Will. In addition, the decedent may have left written funeral, cremation, burial or memorial instructions and a personal property memorandum. All original documents should be stored in a safe place until they can be given to the trust attorney.

The decedent's other important papers will include information about the decedent's assets, including bank and brokerage statements, stock and bond certificates, life insurance policies, corporate records, car and boat titles, and deeds for real estate; and information about the decedent's debts, including utility bills, credit card bills, mortgages, personal loans, medical bills and the funeral bill.

Once all of the important documents have been located, read the Revocable Living Trust and/or a Spousal Protection Trust to determine its specific provisions. When reviewing the trust, make notes about the following - special instructions regarding the decedent's funeral, cremation or burial; who gets the decedent's personal effects; who gets any specific bequests; who gets the decedent's residuary trust; who is named as the successor Trustee(s) to settle the trust as well as who is named as Trustee(s) of any trusts that need to be created now that the Trustmaker has died; the date and location where the trust agreement was signed; and who signed the trust as witnesses and Notary Public.

In addition to reading the Revocable Living Trust and/or a Spousal Protection Trust and summarizing what it says, review the decedent's financial documents and make a list of what the decedent owned and owed, how each asset is titled (in the name of the trust, in the Trustmaker's individual name, as tenants in common, or in joint names with someone else), and, for assets and debts that have a

statement, the value of the asset or debt as listed on the statement and the date of the statement. In addition, the decedent's prior three years of income tax returns should be located and set aside.

Once the decedent's important documents have been sorted through, the next is to meet with an trust attorney to determine if probate will be required and if the attorney's assistance will be needed to settle the trust.

Step 2: Consult Legal Counsel

Once the decedent's legal documents and other important papers have been sorted through, the next step in settling a Revocable Living Trust and/or a Spousal Protection Trust is to meet with a trust attorney to determine if probate will be required and if the attorney's assistance will be needed to help with settling and then terminating the trust.

If probate will be required, then refer to the instructions listed under the tab “When the First Spouse Dies” for detailed information about the probate process.

After you've determined if probate will be required and, even if not, if you will need the attorney's assistance to settle the trust, the next step is to establish date of death values for all of the decedent's assets.

Once you've met with a trust attorney, the next step in settling a trust is to establish date of death values for all of the decedent's assets.

Step 3: Value the Decedent’s Estate

All financial institutions where the decedent's assets are located must be contacted to obtain the date of death values. For assets including real estate, personal effects including jewelry, art work and collectibles, and closely held businesses, they'll need to be appraised by a professional appraiser.

Note that the value of all of the decedent's assets will need to be established, including those passing outside of the trust, in order to determine if any estate taxes and/or inheritance taxes will be owed. Assets that can pass outside of the trust may include those that were owned as tenants by the entirety or joint tenants with right of survivorship, payable on death or transfer on death accounts, and life insurance, IRAs, 401(k)s and annuities with named beneficiaries. Refer to What Are Non Probate Assets and Are They Included in Your Estate? to determine what, if any, non probate assets the decedent owned.

Once the date of death values have been determined for the decedent's assets, the next step is to pay the decedent's final bills and ongoing expenses of administering the trust.

Step 4: Pay Final Expenses

Once the date of death values have been determined for all of the decedent's assets, the next step in settling the Revocable Living Trust and/or a Spousal Protection Trust is to pay the decedent's final bills and ongoing expenses related to administering the trust. This is also the time that the Successor Trustee will need to evaluate whether trust assets, such as real estate or a business, should be sold in order to raise cash to pay expenses and taxes.

It is the successor Trustee's job to figure out what bills the decedent owed at the time of death, determine if the bills are legitimate, and then pay the bills. The successor Trustee will also be responsible for paying the ongoing expenses of administering the trust, such as legal fees, any accounting fees, utilities, insurance premiums, mortgage payments and homeowner's or condominium association fees.

Once the successor Trustee has paid the decedent's final bills and has the trust expenses under control, the next step is to pay any income taxes and estate taxes that may be due.

Step 5: Pay Taxes, if any

Once the successor Trustee has paid the final bills and has the ongoing trust expenses under control, the next step in settling the trust is to pay any income taxes and death taxes that may be due.

The successor Trustee will need to prepare and file the decedent's final federal and/or state income tax returns and pay any taxes that may be due in a timely manner. The final federal income tax return will be due on April 15 of the year after the decedent's year of death.

Aside from filing the decedent's final income tax return, if the estate earns income during the course of administration, then the successor Trustee will need to prepare and file all required federal estate income tax returns (IRS Form 1041) as well as any required state estate income tax returns.

If the decedent's estate is taxable for federal and/or state estate tax purposes, then the successor Trustee will be responsible for preparing and filing the federal estate tax return (IRS Form 706) and/or a state estate tax and/or a state inheritance tax return, and then paying the tax bill(s).

Note that some trusts may be required to file a federal estate tax return even though no estate tax will be due. Refer to ***When is a Federal Estate Tax Return Required to Be Filed?*** to determine if Form 706 will be required to be filed for the decedent's trust.

Refer to ***What Types of Taxes Are Due After Someone Dies?*** for a guide to the different kinds of taxes that may be due and the tax returns that will need to be filed.

Once all of the income tax and estate tax issues have been resolved, the final step to settling the estate is to make distributions of what's left to the trust beneficiaries and terminate the trust.

Step 6: Distribute the Inheritances and Terminate the Trust

Usually, the first question that the trust beneficiaries will ask the successor Trustee is "When will I get my inheritance check?" But unfortunately for the beneficiaries, making distributions of the remaining trust assets to the beneficiaries is the very last step in settling a Revocable Living Trust.

Prior to making any distributions to the trust beneficiaries, the successor Trustee must be certain that every single expense of administering the trust (and the probate estate if there is one) and all taxes have been paid or that enough assets have been set aside to pay the final bills and taxes. Otherwise, if the successor Trustee chooses to make distributions to the beneficiaries but expenses come up later, then the successor Trustee will have to pay these expenses out of his or her own pocket. In addition, if probate of some of the decedent's assets was necessary, then the beneficiaries will need to wait until the probate estate is closed and the probate assets have been transferred over to the successor Trustee before the trust can be terminated and the beneficiaries can receive their inheritance.

If administration of the trust is expected to take more than a year, then the successor Trustee should work closely with the trust attorney and accountant to plan for setting aside enough assets to pay the ongoing trust expenses and then making distributions to the trust beneficiaries in multiple stages instead of in one lump sum.

Frequently Asked Questions

Not all estates must file federal estate tax returns. IRS Form 706, the United States Estate (and Generation-Skipping Transfer) Tax Return, is required by the federal government only for estates that meet certain criteria:

The Value of the Estate Exceeds the Estate Tax Exemption

Form 706 must be filed when a U.S. citizen's or resident's gross estate plus adjusted taxable gifts he's given during his lifetime are valued at more than $5.45 million as of 2016.

This threshold has been indexed for inflation so it can be expected to increase incrementally year by year.

To determine whether a return must be filed, add:

- Adjusted taxable gifts under Section 2001(b) made by the decedent after December 31, 1976

- The total specific exemption allowed under Section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) for gifts made by the decedent after September 8, 1976

- The value of the decedent’s gross estate -- his assets before deducting for liabilities such as debts and taxes

Any gross estate valued at $5.45 million or more as of 2016 must file a Form 706 even if no federal estate tax will be owed after applicable deductions and tax credits have been applied.

The Decedent Was Married and the Surviving Spouse Wants to Make a Portability Election

"Portability" of the estate tax exemption between married couples was introduced in 2011.

Under this rule, a surviving spouse can elect to pick up her deceased spouse's unused estate tax exemption, referred to as "DSUE," and add it to her own federal estate tax exemption.

For example, if a husband dies in 2016 and his $5.45 million estate tax exemption is not entirely used, his wife can elect to add the unused portion to her own $5.45 million exemption.

If he used none of his estate tax exemption, she can pass up to $10.9 million tax-free at her death. If only $2 million of the husband's exemption is used, the wife can elect to add the remaining $3.45 million exemption to her own $5.45 million exemption and can pass up to $8.9 million to her beneficiaries tax-free.

A surviving spouse can elect to use her deceased spouse’s unused estate tax exemption by filing Form 706 for his estate regardless of whether the estate is subject to any estate tax.

When Are Form 706 and the Estate Tax Payment Due?

Form 706 must generally be filed and any tax due must be paid within nine months of the decedent's date of death. An automatic six-month extension of time to file is granted to estates that file IRS Form 4768, the Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes. Under certain limited circumstances, more additional time to file may be granted.

Which States Require the Preparation of Form 706?

Even if an estate is not taxable at the federal level, it may be taxable at the state level. Some estates that are nontaxable for both state and federal purposes may still be required to prepare and file state estate tax returns.

When Should a Nontaxable Estate Consider Filing Form 706?

Some estates that are not required to file federal estate tax returns should consider filing one anyway to lock in date-of-death fair market values of estate assets. This includes estates that utilize AB Trusts or ABC Trusts, as well as estates that create lifetime trusts for the benefit of non-spouse beneficiaries. It's typically much easier to later settle the estate of a surviving spouse or a non-spouse beneficiary when an estate tax return has previously been filed because the starting fair market values and step-up in basis of estate assets will be clearly stated on the initial decedent's IRS Form 706.

For the latest version of Form 706 and its instructions, visit the IRS forms webpage. For historical versions of Form 706 and its instructions, visit the prior year products webpage.

What Type of Taxes Might be Due?

U.S. Federal Estate Tax Return.

NOTE: Tax laws change and the following information may not reflect recent changes in these laws. For current tax or legal advice, please consult with an accountant or an attorney since the information contained in this article is not tax or legal advice and is not a substitute for tax or legal advice.

When someone dies, taxes are not going to be the first thing on the minds of the loved ones left behind. But, unfortunately, at some point, the heirs of the deceased person's estate or the beneficiaries of the deceased person's trust need to address taxes that will be due as the result of their loved one's death. Below you will find a list of taxes that the estate or trust of a deceased person may owe and the types of tax returns that will need to be filed.

While estate taxes seem to get all of the publicity when it comes to taxes owed after someone dies, the reality is that the majority of estates will not owe any federal estate taxes. Why not? Because in 2014 the federal estate tax exemption is $5.34 million, and the exemption will only continue to be adjusted upwards on January 1 of each year in the future based on inflation. In fact, with average inflation, the exemption is expected to reach $9 million per person by 2034.

Nonetheless, estates valued at $5.34 million or more must file a federal estate tax return using IRS Form 706, which is officially called the United States Estate (and Generation-Skipping Transfer) Tax Return. Estates of nonresident, alien decedents that owe U.S. federal estate taxes must file IRS Form 706-NA, which is officially called the United States Estate (and Generation-Skipping Transfer) Tax Return Tax Return of nonresident not a citizen of the United States. More

State Estate Taxes

While most estates will not have to file a federal estate tax return or pay any federal estate taxes, the residents of the following states, or a deceased person who owns real estate in one of these states, may owe state estate taxes: Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, Tennessee, Vermont and

Washington. Click on the link for each state to learn more about each state's estate tax exemption and state estate tax return filing requirements. More

State Inheritance Taxes

While an estate tax is a tax that is based on the overall value of the deceased person's estate, an inheritance tax is based on who receives the deceased person's property. Currently only six states collect a state inheritance tax: Iowa, Kentucky, Maryland, Nebraska, New Jersey and Pennsylvania - that's right, Maryland and New Jersey collect both state estate taxes and inheritance taxes.

So which beneficiaries of an estate may have to pay state inheritance taxes? The good news is that in all six states assets passing to the deceased person's surviving spouse and charity are exempt from the state inheritance tax, while in several - Iowa, Kentucky, Maryland and New Jersey - assets passing to the deceased person's descendants are also exempt. Thus, the likelihood of an inheritance being subject to a state inheritance tax is minimal at best.

As far as Washington state goes, on February 3, 2005, the Washington Supreme Court rendered a decision that effectively repealed the Washington estate tax. The legislature and the governor responded by enacting a new State estate tax to address the loss of tax revenue that would otherwise be incurred by the State.

The estate tax applies to residents of Washington who die on or after May 17, 2005. The value of the estate for estate tax purposes is based on the fair market value of the assets of the decedent's estate, after the deduction of amounts that are owed as of the decedent's date of death and the expenses incurred in the administration of the estate.

The new law allows an exemption of $1.5 million for decedents dying in 2005 and $2 million for decedents dying on or after January 1, 2006. The new Washington estate tax would not be affected by any changes in federal estate tax exemptions and rates.

The new State estate tax rates start at 10% on values in excess of $1.5 million ($2 million after 2005) and increase gradually to 19% on amounts in excess of $9 million. The statute includes the following tax table:

If Washington Taxable* Estate Is At Least	But Less Than	The Amount of Tax Equals Initial Tax Amount	Plus Tax Rate %	Of Washington Taxable Estate Value Greater Than
$0	$1,000,000	$0	10.00%	$0
$1,000,000	$2,000,000	$100,000	14.00%	$1,000,000
$2,000,000	$3,000,000	$240,000	15.00%	$2,000,000
$3,000,000	$4,000,000	$390,000	16.00%	$3,000,000
$4,000,000	$6,000,000	$550,000	17.00%	$4,000,000

$6,000,000	$7,000,000	$890,000	18.00%	$6,000,000
$7,000,000	$9,000,000	$1,070,000	18.50%	$7,000,000
Above $9,000,000		$1,440,000	19.00%	Above $9,000,000

*Under this definition the applicable state exemption has already been subtracted from the value of the estate.

The amount of tax paid to the State will be deductible on the federal estate tax return, assuming that one is required to be filed. The current top marginal federal estate tax rate is 35%. The ability to deduct the Washington estate tax for federal estate tax purposes effectively reduces the marginal State estate tax rates. Accordingly, with a federal rate of 35%, the lowest effective State estate tax rate will be 6.5% and the highest effective tax rate will be 12.35%.

The Washington estate tax allows a deduction for the value of qualified "real property" and qualified "tangible personal property" used primarily for "farming purposes." The definition of "farming" is quite broad and includes the raising or harvesting of agricultural or horticultural commodities; the raising, shearing, feeding, caring for, training, and management of animals on a farm; and the planting, cultivating, caring for, or cutting of trees. To qualify for this deduction, certain percentage requirements must be met and various rules must be satisfied, including "material participation" in the operation of the farm by the decedent or a member of the decedent's family.

The federal estate tax law allows an unlimited deduction for property passing to one's spouse in a qualified manner. This same deduction is available for State estate tax purposes. Accordingly, it continues to be possible to defer the obligation to pay estate taxes upon the death of the first of a husband and wife to die if assets pass in a qualifying manner to, or for the benefit of, the surviving spouse, regardless of the value of the estate for estate tax purposes. The federal estate tax option of "portability" of a spouse's exemption, introduced in 2011, is not available for State estate tax purposes.

A better way to explain Washington's estate tax is as follows:

Washington state currently imposes its own estate tax on estates worth more than $2,129,000. So if you are a state resident and leave that much money at your death (or if you're a nonresident but own valuable property in the state), your estate may owe tax to the Washington Department of Revenue. Depending on the federal estate tax law in effect at your death, your estate may or may not owe estate tax to the IRS; for deaths in 2017, estates of less than $5.49 million do not owe federal estate tax.

Which Estates Must File and Which Must Pay a Washington State Estate Tax

Whether or not your estate will owe Washington estate tax depends on the law that's in effect in the year of your death. For deaths in 2017, if the gross estate of a Washington resident has a value of more than $2 million, the executor must file a state estate tax return. The estate of a nonresident might also owe Washington tax, if the deceased person owned valuable real estate (or other tangible property items) in the state.

Many estates that must file an estate tax return don't actually end up owing tax. That's because the threshold to file a return ($2,000,000) is less than the threshold to pay taxes ($2,129,000). Also, any

property left to the surviving spouse or a tax-exempt charity passes free of estate tax, and because some expenses reduce the size of the taxable estate.

It's your executor's duty to file any estate tax returns that are required. If your estate doesn't go through probate—meaning no executor is appointed by the probate court—then the people who inherit your property, or the trustee of your living trust are responsible for filing the return.

To determine whether or not filing a Washington estate tax return is necessary, the executor will total up the value of the assets you owned at your death, including:

Real estate

Bank accounts

Investment accounts (stocks and bonds, mutual funds)

Vehicles

Proceeds from life insurance policies on your life, unless you don't own the policy at your death

Retirement account funds

Any interest in a small business (sole proprietorship, limited liability company, or small corporation)

Assets held in a revocable living trust (or other trusts the deceased person controlled)

If you're married, your estate contains all of your separate property and half of the community property owned by you and your spouse. Unlike the IRS, Washington state does not require you to include in your estate the value of taxable gifts made during your lifetime.

If more than half of the value of your estate comes from real estate (and related items) used for farming, the estate can take a deduction for the value of the farming property.

No 'Portability' for Washington Spouses

Federal law allows spouses to share their individual federal estate tax exemptions. If the first spouse to die doesn't use up all of his or her entire federal estate tax exemption, then the surviving spouse's estate can use the unused portion of the first spouse's exemption amount. This is called the "portability" provision of the law. Washington state, however, does not allow spouses to share their individual exemptions for state estate tax purposes.

Tax Returns and Payments

If a Washington state estate tax return is required, your executor will have to either file it nine months after the date of death or apply for an extension of time to file. An extension gives your executor more time to file the completed return, but estimated tax must still be paid on the original due date. If payment is late, penalties and interest start to accrue on the unpaid amount as of the due date. Taxes can be paid in installments if your estate contains a small business.

Tax return forms (there are two state forms; which one to use depends on the size of your estate) and instructions are available online from the Washington Department of Revenue.

Your executor may find this online information useful as background, but he or she will want to hire an expert to actually prepare the estate tax return, which is lengthy and complex. The fee may be a few thousand dollars, which can be paid from estate assets.

Gift Taxes

A type of tax that is often overlooked is the federal gift tax. Two states also collect a gift tax at the state level: Connecticut and Minnesota. In general, if an estate is subject to federal estate taxes or state estates in Connecticut or Minnesota, then the estate may have to file a gift tax return in order to report any gifts that were made during the deceased person's lifetime that were not reported while the person was still alive.

The federal gift tax return is filed using IRS Form 709, officially known as the United States Gift (and Generation-Skipping Transfer) Tax Return. More

Generation Skipping Transfer Taxes

At the federal level, generation-skipping transfer taxes, known as GST taxes for short, only apply to estates that owe federal estate taxes where some of the estate is passing to someone who is a "skip person" or some of the estate is passing into a trust that is a generation skipping trust. A "skip person" is a relative who is two or more generations below the deceased person, or an unrelated person who is 37 1/2 years or more younger than the deceased person.

At the federal level, the generation-skipping transfer tax exemption is the same as the estate tax exemption, which means the exemption is $5.34 million in 2014 and will continue to be adjusted upwards on January 1 of each year in the future based on inflation. Thus, the majority of estates will not be subject to federal generation-skipping transfer taxes.

The generation-skipping transfer tax exemption can be allocated to lifetime transfers using IRS Form 709, or after death using IRS Form 706.

Note that the majority of the states that still collect their own separate state estate tax also assess a separate generation-skipping transfer tax. More

Income Taxes

Aside from filing a deceased person's final income tax return at the federal level (and state level if applicable), there will be a period of time while an estate or trust is being settled after someone dies that the estate or trust assets will earn interest prior to the time the assets can be distributed out of the estate or trust to the ultimate beneficiaries. In addition, while certain types of assets owned by a deceased person will receive a step up in basis, if these assets (such as stocks and bonds) are sold after death, then the sale may result in a capital gain even after taking into consideration the step up in basis. Aside from this, certain types of accounts have built-in income tax consequences referred to as "income in respect of a decedent" (or IRD) when the owner dies, such as non-Roth IRAs, 401(k)s, and annuities.

Thus, while many estates and trusts may not be affected at all by estate taxes, inheritance taxes, gift taxes, or generation-skipping transfer taxes, the majority will be affected in some way or another by income taxes.

Income earned by an estate or a trust is reported on IRS Form 1041, officially known as the U.S. Income Tax Return for Estates and Trusts, for federal income tax purposes, and the estate or trust may also need to file a state income tax return for estates and trusts. More

What Should You Do?

If you are not sure if your loved one's estate or trust will be subject to any taxes, or if you are not sure if what you have inherited will be subject to any taxes, then consult with an estate planning attorney, tax attorney, or accountant to be sure.