

## **Legal Matters: How Property Passes At Death**

### **Introduction**

When someone dies, whatever he or she owned passes to new owners. Sometimes a will passes the property; sometimes other arrangements have been made, such as joint bank accounts, life insurance beneficiary designations, and the like. There are formal legal procedures for settling someone's affairs – often referred to as “probate” – and informal procedures which usually involve filling out forms for financial institutions. The following should help you to decide which procedures are right for you.

### **If There is a Will**

The traditional way people transfer legal ownership to their property at death is by a written document called a will. As mentioned above, when someone dies one of the first steps in settling his or her affairs should be locating the will.

Wills transfer the legal ownership of property owned by a person in their individual name, without contractual or other arrangements that automatically transfer ownership at death. Generally, if property is held in the name of the deceased, or there is no written way to own the property, that property passes under a will. These are called “probate assets.” Many types of property pass automatically at death outside the will, which are called “non-probate assets.” They are listed later in the booklet.

Often the will can be found among the deceased's important papers – for instance, in a safe deposit box – or with the attorney who wrote it.

Under Washington law, anyone locating a will has a duty to deliver it to the personal representative named in the will within 30 days of the date of death. If the named personal representative can't be located within 40 days, the will must be delivered to the clerk of the Superior Court in the county where the person died.

### **If There is No Will**

If a person leaves no will, his or her property passes according to Washington law to a specific list of relatives, usually the next of kin. We call these individuals the person's heirs.

In the absence of a will, surviving spouses receive all community property and a substantial amount of the separate property. The rest of the property is divided among descendants (children, grandchildren or great-grandchildren) or, if there are no descendants, it is distributed to parents, brothers and sisters, their descendants, and so forth.

Ultimately, in the event there are no survivors to inherit the property, the property passes to the State of Washington.

### **Small Estates**

If the deceased leaves less than \$60,000 in assets and no Washington real estate, it is often possible to pass legal ownership by using a simple affidavit procedure rather than having a will approved by a court or having a court identify the person's heirs. When the deceased leaves only personal possessions and a small amount of property, family members often divide that property informally without even using an affidavit. Contact your attorney or community legal service for assistance.

## **Probate**

Larger estates normally require court procedures to transfer legal ownership. This may involve only a little supervision by the judge or court commissioner, but there are at least five steps involved in this process called probate.

1. The court is notified of the person's death. If there is a will, it is delivered to the court and it will be determined if it is in fact the Last Will and Testament. If no will can be found, the court will determine who the heirs are and what their share will be, all according to state law. If a will is found but someone objects to any part of it, they have four months to file an official complaint with the court called a "Will Contest." The court will schedule a time to consider the complaints and order changes if it agrees with the complaining party.
2. The court will appoint someone to be the legal representative of the estate with all the authority to sign for the deceased and deal with the deceased's property. There are various titles given to this person of authority, such as executor, executrix, administrator, etc. They are all similar in that they are the only ones with authority to act for the deceased. A general term for this person is the "Personal Representative."

The personal representative must, within twenty days, notify everyone named in the will, every legal heir and every other person with a financial interest in the estate, and must tell them a court proceeding has begun.

3. A Notice to Creditors is then published in a local newspaper, and must be delivered to any known creditors. Creditors may include credit card issuers, mortgage lenders, medical care providers, and even the Department of Social and Health Services if the deceased

was receiving Medicaid benefits. The personal representative is obligated to make a reasonable search for creditors of the deceased.

Generally, if a creditor fails to file a written claim for payment within four months of the publication of this notice, the claim is barred forever. If a claim is filed but rejected, the creditor may file a lawsuit against the estate.

4. Within 90 days of being appointed, the personal representative must file a list of all of the estate's property, sometimes referred to as an inventory. It need not include values, but it does become part of the court file.

In settling the deceased's affairs, the personal representative must keep separate financial records for the estate. Estate property and funds should not be mixed in with the personal representative's own property and funds.

There are special accounting rules that apply to estates; any personal representative with questions should get the help of an experienced certified public accountant. Sometimes personal representatives are required to give a full accounting report to the court. For this reason, every personal representative should keep careful and complete records.

5. Finally, after all other steps have been taken – including filing of estate tax returns and payment of taxes – the remaining property is distributed to those entitled to receive it and the estate is closed. In most estates, the personal representative signs a declaration of completion (a brief report on the closing of the estate, and a listing of professional fees paid), which is sent to all of the beneficiaries. If a beneficiary has a question or a dispute about how the estate has

been handled, court review of the personal representative's actions and fees can be requested.

Under Washington law, the personal representative can ask the court to approve any action the personal representative wants to take, such as selling real property or vehicles, or paying legal fees, or for any part of the estate settlement process where the court's review and support seems important to the personal representative. However, powers of the personal representatives are broad enough not to require supervision very often; and when they act in good faith and exercise their best judgment, court approval is not required and most estates are settled without further court involvement.

### **If There is Property Outside Washington**

If the deceased has left real estate or certain types of personal property located outside the State of Washington, court proceeding in other states may be required. Some states have special streamlined procedures for such "ancillary" probates. Contact your local attorney for assistance in this process.

### **Appointing a Guardian for Minor Children**

Usually the surviving parent is the guardian. If there is no surviving parent, the person named in the deceased's will is usually appointed guardian by the court. A close friend or relative may be appointed if no guardian is designated in the will.

As mentioned above, if the deceased left children under 18 years of age, it may be necessary to appoint a legal guardian, at least to make decisions about where they should live and go to school, about medical treatment, and about their religious upbringing.

## **Minor or Incapacitated Beneficiaries**

If property of the deceased has been bequeathed to a minor or to any other incapacitated person, and the deceased has not provided for a trust or other management arrangement in the will itself, it may be necessary for the personal representative to have a legal guardian appointed for the beneficiary.

Washington law permits use of a less formal “statutory” trust called Uniform Transfers to Minor Act custodianship for property passing to minors. This arrangement is particularly appropriate when a small gift or inheritance to a minor is involved. In general, these protective arrangements end on a minor’s eighteenth birthday.

## **If There Was a Guardianship**

If the deceased was incapacitated before death and a guardian had been appointed, the guardian must end that guardianship with a formal report to the court. If the deceased did not leave a will, there is a special streamlined procedure available to distribute the property directly from the guardianship to the heirs, without a separate probate proceeding.

## **If the Deceased Was a Beneficiary or Trustee of a Trust**

Sometimes the person who dies was a beneficiary of a trust, or was acting as trustee – often of a trust created by the will of a deceased spouse or other relative. If so, an attorney should be consulted. If the person was a trust beneficiary, the trustee should be notified of the death so that any income or other payments from the trust can be stopped.

Sometimes a trust gives the beneficiary a power to name the next beneficiary, or the power to give directions about the continued administration of the trust after death. These powers are referred to as powers of appointment. Depending on what the trust agreement says, the

powers of appointment might be “exercised” in the deceased’s will or in some other document. The trustee will need to get a copy of that will or other document.

If the deceased was a trustee, it will be necessary to identify and contact any successor trustee or co-trustee. This person or financial institution will often be named in the trust; sometimes another document signed by the deceased accomplishes this.

It might be necessary to prepare an accounting for the time during which the deceased served as trustee, and to prepare a list of assets for the successor trustee and beneficiaries. Trust assets and records should be kept separate from the deceased’s personal assets and records.

If the trust ends with the death of the trustee, the successor trustee will have to take steps to wrap up the trust administration, possibly including filing of tax returns, and to distribute the trust property to the proper beneficiaries.

Under Washington law these steps should be taken as soon as possible. Again, if any questions about handling the trust come up, they should be discussed with any attorney.