

# **SUMMARY OF FORMAL ESTATE ADMINISTRATION IN IOWA**

## **EXECUTOR OR ADMINISTRATOR**

In the probate of an estate, either an executor (that person named in the will) or an administrator (that person named by the Court) is directly responsible for the proper settlement of the estate, the collection of taxes, and the determination of basis and the reporting thereof.

## **FUNCTIONS OF PROBATE**

Purposes of probate of an estate are:

- 1) To make an accounting of the assets and liabilities.
- 2) To protect the property of the estate.
- 3) To pay debts and clear all tax matters involving the decedent (deceased person) including income, estate and inheritance taxes, and to assume responsibility for the determination of the basis of all property and the reporting thereof.
- 4) To determine who is entitled to share in the estate and to distribute the estate to the proper parties.

## **AUTHORITY**

The Court must empower you to act as an executor or an administrator. In fact, your authority to act commences with the issuance of these legal documents – letters testamentary for the executor and letters of administration for the administrator. The Court will issue such additional copies upon request as are necessary. Remember each time you transact estate business, you should take a copy of your letters of appointment with you. However, if you take possession of any of decedent's property, you may have the responsibility of an executor for certain tax purposes even if you are not so appointed by the Court.

## **TITLE**

When a person dies, title to all of his real estate (land) and personal property (all other) passes to those persons to whom it is given in the will.

If there is no will, then the property is distributed to those persons to whom it descends by law. If this is the case, we suggest that you have your lawyer explain to you the "family tree" and how property is handed down.

Certain property does not pass by virtue of the will or by virtue of inheritance and passes outside of the jurisdiction of the executor or administrator, as the case may be, and this property is called non-probate property. While the executor or administrator may not have possession of this property, ordinarily he is subject to the requirement to collect the taxes which result from the passing of this property. All of the other property where there is a will, or if the person dies

without one, is subject to the possession of the executor or administrator and to the control of the Court for the purpose of administration, sale, or other disposition.

If there is real estate subject to an outstanding lease you must take control of the real estate and collect the income. Other situations may exist which may require you to take possession of the real estate. You must also take charge of all personal property coming into your hands and collect the income from it. Such income must be reported to the appropriate tax authority. Exempt real estate and exempt personal property coming into your hands shall be delivered to the individual entitled to it. Your lawyer will advise you as to what is exempt.

## **DUTIES**

As executor or administrator great responsibility is placed on your shoulders. You should take possession of all the probate property of the estate and distribute it properly. You must investigate and determine the amount of non-probate property and report it for taxation purposes. You are an officer of the Court. You must take an oath, swearing that you will uphold the law and fulfill the duties of your office. You are the impartial representative of all parties with an interest in the estate, including persons with claims against the estate, and you should be completely fair and open in dealing with them and should not deal with yourself except by specific Court order after your lawyer has given the appropriate notices.

Here is a summary of your principal duties:

- 1) To take possession and protect the real estate and personal property of the deceased except in those cases and in respect to such property as the law otherwise provides for, and as to which your lawyer will advise you.
- 2) To locate all the decedent's income tax return copies still in existence and the information needed to file a final income tax return for the decedent.
- 3) To keep real estate and personal property insured.
- 4) To receive the rents and payments due and to collect interest, dividends, and other income.
- 5) To make proper demand and collect all of the debts, claims, and notes due to the deceased.
- 6) To keep an accurate record of all the receipts and the expenses.
- 7) To assist in determining the names, ages, social security numbers, addresses, and degree of relationship of all possible heirs or distributees.
- 8) To litigate or settle any pending lawsuit in which the deceased had an interest.
- 9) To prosecute any claims arising as a result of the wrongful death of the person whose estate is being administered.
- 10) To keep estate property invested under Court order until distribution is made.
- 11) To obey and carry out all the orders of the probate Court.

- 12) To determine and pay gift taxes, inheritance taxes, estate taxes, and all other taxes, including the income tax at the State and Federal level for the decedent.
- 13) To provide such historic data as you may be able to determine so that appropriate information may be filed with the United States Government, reporting the basis or cost of such property, and to provide the distributees of the property with such basis information.
- 14) To pay the valid claims of creditors, and if necessary, to sell the estate property to do so.
- 15) To distribute the remaining assets to the proper heirs or to the beneficiaries named in the will in the manner outlined to you by your lawyer.

If you fail to perform your duties, you can be held liable for the loss you cause the estate and the Court can order your removal. In addition, there are severe consequences for an executor or administrator who fails to perform his tax duties.

### **BOND**

The Court may require the executor or administrator to be bonded. This is because the executor or administrator often deals with substantial property and funds.

The bond, set by the Court, is based on the estimate value of the estate and the income of the estate. Although some wills may exempt the executor from posting bond, the Court may nevertheless require one.

The bond, subject to Court approval, may be signed by persons who own property in the county or it may be purchased from a bonding company.

### **LAWYER**

Although you are primarily responsible for the administration of the estate, the law contemplates the retaining of a lawyer. He will be your closest advisor. He will not only offer advice, but will help in the preparation of documents and will guide you in complying with the probate and tax laws.

Your lawyer will represent the estate in Court proceedings. It is his duty to see that the estate proceeds as quickly as the law allows. He will advise you of the notices which you are required to give.

You must be prompt in obtaining information and reports that he requests and you should co-operate closely with him in the preparation of all papers, particularly the inventory. Failure to do this will cause delay in completion of administration and might cause the Court to remove you as executor or administrator. Consult regularly with your lawyer and follow his advice closely. It will save a great deal of time and avoid misunderstanding.

## INVENTORY

After all the property is collected or accounted for, the law requires that a written true general inventory be made and filed. This must be done within 90 days after you are authorized by the Court to act.

You must list the following:

- 1) Name, age, social security number, and last residence of the decedent.
- 2) Date of death of the decedent.
- 3) Whether decedent died testate (with a will) or intestate (without a will).
- 4) Name and post office address of the administrator or executor.
- 5) Name, age and post-office address of the surviving spouse, if any, including her social security number.
- 6) If testate, name, age, relationship, social security number, and post office address of each beneficiary under the will.
- 7) If testate, the name, age, and address of each child, if any, born to or adopted by the decedent after the execution of the will.
- 8) If intestate, name, age, relationship, social security number and post office address of each heir.
- 9) In any event, name, age, relationship, social security number and post office address of each recipient of non-probate property.
- 10) Inventory of all the real estate of the decedent in the State of Iowa, giving value and accurate description of each tract.
- 11) Any real property located outside of the State of Iowa not otherwise reported.
- 12) Personal property regarded as exempt from execution.
- 13) All other personal property.
- 14) All property (whether subject to probate or not) not otherwise listed which is subject to the Iowa inheritance tax. (This might include, for example, gifts made by the deceased person within three years of date of death, gifts made in contemplation of death, and jointly owned property, and any gifts made in excess of the applicable gift tax exclusion by the decedent).
- 15) A statement as to whether or not there is any property not inventoried which might be reported for federal estate tax purposes. (This might include, for example, insurance payable to a named beneficiary).

Ordinarily, the lawyer drafts the inventory form for the Court, but it is your personal responsibility as the executor or administrator to make an accurate accounting of the property and to see that all items are properly listed and taken care of until they are distributed to the heirs, or until they are sold.

## FACTS TO OBTAIN AS TO ITEMS IN THE INVENTORY

- A. **Real Property.** All the real estate in which the deceased person had any interest whatsoever should be listed; the city, village, or town, the street address; legal description; amount of land; improvements, if rental property, give rental and present tenants; if mortgaged, list to whom, amount, and which date payments are due; taxes, when last paid or what is presently due; abstract or title insurance; whether abstract is up to date; insurance on the property, including any kind (such as fire, liability, etc.) amount company, policy number, local agent, date of expiration, when purchased, if you can determine, the cost and date of purchase and of each improvement made upon such property. If it is depreciable, also the depreciation taken.
- B. **Personal Property.** This will include all property, other than real estate, and since it covers such a wide variety of belongings, numerous categories will be suggested. You should make the list for the attorney, considering these items:
- 1) **Automobiles and trucks.** Include make and model, year title, serial or motor number, license number, insurance, liens, cost and date of purchase, if you can determine it, and the depreciation taken, if any.
  - 2) **Household furniture.** Major pieces usually are described room by room, with pieces of greater value such as refrigerator, stove, laundry equipment and antiques listed separately; mortgages or other liens against this kind of property.
  - 3) **Farm Machinery.** List each major item separately with year and model number, mortgagers or other liens, cost and date of purchase, if you can find it, and the depreciation taken during the life of the property.
  - 4) **Farm Livestock.** List each animal or group of animals or fowl separately, giving the kind and age or other identifying characteristics, and mortgages or other liens, cost and date of purchase if the property has been purchased, whether or not depreciation has been taken, and if the property is born on the premises and is breeding property, the date of birth, if at all possible. Also whether the property is raised property or purchased property.
  - 5) **Business inventory.** The list of stock in trade, fixtures, tools and equipment of a business in which the deceased was owner or part-owner should be made separately with the cost and date of purchase for each. If you do not feel qualified to make the listing, ask help from another part-owner or an experienced employee and check with your lawyer. It is also necessary to list the inventory value of the property at the time of the decease.
  - 6) **Personal insurance.** List each policy, such as life, accident and health, hospitalization, etc., separately including the company, its address, serial number, amount, beneficiary, and whether most recent premium was paid, and annuities or

- retirement benefits. (This list will not include policies on real estate or machinery or equipment.)
- 7) **Cash assets.** If in a bank or savings and loan company, list name of account, checking or savings, name of the bank and address, and amount of the deposit. List the exact amount of cash in the possession of the deceased or in his safety deposit box or in his billfold. Joint accounts should include the name and address of each joint owner and his relationship to the deceased.
  - 8) **Promissory notes.** Include exact payees, name and address of the maker and endorser, principal amount, date due, interest rate, present balance due, and dates of interest. Also list whether note is secured by mortgage and describe the mortgage, if any.
  - 9) **Other amounts due deceased.** Accounts and other obligations owing to the deceased person.
  - 10) **Stocks and bonds.** List should include name of issuing company or association, serial number, type of issue, registered owner, interest rate, date on the bond, date last dividend was declared, principal amount or par value of each bond or share of stock. Jointly owned stocks or bonds should be listed with the name of the owners other than the decedent.

If you have any questions about the listing or ownership of property make notes concerning the property and notify your lawyer. This will help you make an accurate inventory. If the deceased is survived by a spouse some of the items enumerated in Paragraphs 1 – 5 above may belong to such surviving spouse as exempt property and therefore may not be subject to the administration proceedings except to be set off and delivered to the spouse and to be properly reported in all respects for tax purposes. You should discuss this matter with your lawyer before he prepares the inventory.

## **GIFTS**

Gifts or other transfers of property made by the deceased could involve tax problems. You should determine the date the gift was made, if, and when it was reported, and whether or not any tax was paid and to whom the gift was made. These matters should be discussed with your lawyer.

## **CLAIMS**

The executor or administrator is under no legal obligation to seek out persons who have claims against the estate of the deceased person which arose out of the debts contracted during his lifetime. You must, however, give a notice to creditors to file claims, which notice is printed in a local newspaper once on each of two successive weeks. The form of the notice is prescribed by law and the publication should be arranged by the lawyer.

This notice will announce to creditors that they must file their claims within six months after the date of the second publication of the notice. If a claim is complicated, the Court may, upon application, grant additional time to the claimant for filing his claim. If he fails to file his claim in time, he loses his legal right to collect. You should not say or do anything which might lead a creditor to believe that you intend to pay without the filing of a claim.

You should direct any party wishing to file a claim to your lawyer or to his own lawyer.

After the final date for filing claims (six months from the date of the second publication of the notice to creditors) you should proceed to pay the debts and charges allowed against the estate in accordance with the provisions of the law, **but not until your lawyer specifically approves their payment.** Some claims, such as claims for funeral expenses and costs of last sickness, may be paid before six months have passed if your lawyer approves.

### **RECORDS**

- A. Income and Expense of the Estate. You must keep an accurate record of all money received. It is most helpful to have an account book listing each of these items, showing the date, the person or company from whom received or to whom paid, the purposes and the exact amount. This record should be separate from, and in addition to, the checking account record described in "Bank Account" which follows.
- B. Time and Expenses of Executor or Administrator. By law you are entitled to compensation for the amount of time spent taking care of the estate and for your actual expenses such as travel, so you should keep an accurate record of these items including the date, amount of time spent, travel, mileage, and other items of expense.

### **EXECUTOR OR ADMINISTRATOR FEES**

The law recognizes that the executor or administrator has a responsible position in the probate of the estate by providing a schedule of fees which the Court can allow, based on the size of the estate and time spent caring for it. This is a legitimate expense of probate, and it is charged in addition to mileage, phone calls, money advanced and other items of expense. Ask your attorney for information regarding the schedule of fees and for help in preparing your expense record and claim for services.

### **ATTORNEY FEES**

Since your lawyer also has a great responsibility in handling the matters in an estate, the law allows him reasonable compensation for these services. Attorney fees in a probate proceeding shall be approved and allowed by the presiding District Court Judge.

However, lawyer and Judge are guided by the schedule of fees set out in the Iowa Probate Code. In adopting this probate fee schedule, the legislature has taken into consideration the time involved, the large volume of documents which a lawyer must prepare, the usual number of

conferences with the administrator or executor, heirs, creditors, and tax authorities. The lawyer's fees must also cover time used for Court appearances and later for determining that a proper transfer and record of title is made for the heirs who receive the property. The fee is usually based on a percentage of the value of the estate.

Probate is governed mainly by written laws which require much detailed work; a substantial amount of time and overhead expense are involved. As the size of the estate increases, the tax problems and the responsibilities also become greater. Whether the estate is large or small, the lawyer must exercise great care and assume the responsibility of insuring that the proceeding is properly handled.

The Court uses many basic factors to guide it in setting attorney fees under the statutory framework, such factors including but not limited to – time consumed, skill required, and the results obtained.

### **BANK ACCOUNT**

The lawyer for the estate will usually advise you, as executor or administrator, to open a checking account for the estate at a local bank. All money you receive as executor or administrator should be placed in this account. All cancelled checks should be kept since they must eventually be filed with the Court. Do not put your personal money in this account and never put estate money into your personal account. Never “short cut” the estate checking account by placing deposits directly into a passbook or other savings account.

### **SALE OF PROPERTY**

- A. Real Estate. Legally, you cannot sell real estate without a Court order approving the sale unless the will permits it. Never make any promise to sell until after you discuss it fully with your lawyer.
- B. Personal Property. Perishable items of personal property need to be sold at once and usually can be sold without order of Court, but you should always discuss sale of these items with your lawyer before you act.

Other personal property of a non-perishable nature may be sold without order of Court if the will so provide; but, in the event there is no such provision in the will or no will at all, such other personal property can only be sold after obtaining orders from the Court and on such terms and conditions and after such notices and hearings as the Court may fix.

**You are not permitted to purchase the property yourself** or sell it to your lawyer without the specific approval of the Court and after notice to all interested parties.



## **TIMETABLE**

It is difficult to predict with certainty the amount of time it will take to settle any estate, because each estate proceeding is uniquely different.

According to State law, the executor or administrator must file the final account and make final settlement and distribution of the estate within three years after the second publication of notice to creditors, unless otherwise ordered by the Court. Each estate has certain reporting for income and other taxes. These timetables should be ascertained from your lawyer at an early date so that planning can be made for the best tax consequences for the estate.

Ordinarily, the administration of the estate will not require the full three-year period; but under certain circumstances, it might. Ordinarily an estate can be closed within a year to eighteen months of its opening. Your lawyer will be able to advise you in regard to the time required and can explain why various tax options and other matters may make it advisable to close the estate at the earliest possible time, or under certain circumstances, at a later date. In any event if the estate is subject to federal estate taxes, allowance must be made for the time taken by the federal audit people to determine the exact federal estate tax. You will receive a release of liability from such tax before the closing of the estate.

## **SETTLEMENT**

A. Expenses of Administration. These include, among other things, Court costs, your own fees and expenses, your attorney's fees and expenses, and other items of expense necessarily incurred in the administration of the estate, many of which are specifically listed in the Probate Code. These expenses must be paid before any payment on claims or debts and before the payment of claims for last sickness or funeral expense (at least enough money should be on hand for the payment of these costs before paying funeral or other expenses.)

B. Claims. As a general rule, do not pay any debts or claims until your lawyer approves their payment.

Occasionally the estate can settle certain claims to take advantage of discounts for prompt payment. Some funeral homes provide for such discounts and certain utilities do also. This might be done if the funds are available. Again, consult your lawyer.

C. Distribution. After payment of costs of administration and claims, and upon obtaining the necessary tax clearances, distribution of the assets remaining can be made in accordance with the terms of the will or as required by law if there is no will. Proper receipts should be obtained from all persons receiving property from the estate.

D. Basis Statement. Prior to the final closing of the estate, the executor may be required to forward to the Internal Revenue Service, certain statements of basis of all property on an item-by-item form.

E. Discharge. After you have paid the claims and debts, the costs of administration, obtained your tax clearances, distributed the rest of the property, and have filed your statements of basis as required by law, and when proper receipts are on file, you will make your final report to the Court. After a hearing, the Court will sign an order discharging you as an executor or administrator and, if the Court required a bond, your bond will be released. This order, when entered by the Court, will end your responsibilities in the estate proceeding.

F. Discharge without Court order. In the event you have obtained all of the tax clearances and paid all of the claims, debts and costs, as above stated, then in that event if your attorney is able to obtain proper waivers from each interested party and all parties are adult, it is possible to obtain your discharge without a Court order. Your attorney will explain this to you.

G. Notice of Termination of Fiduciary Relationship. At such time as you have been finally discharged from the estate and the responsibilities of executor or administrator, you may want to file with the Internal Revenue Service a Notice of Termination of your fiduciary relationship.