

**Robert C. Adamski**  
**Attorney at Law**  
**1714 Cape Coral Parkway, East**  
**Cape Coral, Florida 33904**  
**Telephone: 239-542-4733**  
**Email: [RCAdamski@hotmail.com](mailto:RCAdamski@hotmail.com)**  
**Website: [RCAdamski.com](http://RCAdamski.com)**

## **SETTLING THE ESTATE**

### **What you should know to begin the process.**

This article is a primer for trust and probate administrators who must handle a decedent's estate. The term "settling the estate" refers to handling the transfer of the decedent's assets.

#### **IMMEDIATE CONCERNS**

At death the most immediate concern is the funeral arrangements. If the decedent has made his or her own arrangements the task is much easier. In any case the arrangements should be made and the funeral handled before the estate administration begins.

The funeral expense can be paid from the estate if the expense is not prepaid by the decedent.

The funeral director will provide death certificates. Obtain at least three certified copies, more if there are insurance policies to make claims upon. Expect to wait two or three weeks to receive the documents.

Locate the decedent's important documents. These include the last will and/or trust, bank account records, deeds, brokerage account records, last year's tax return, etc. You will not need complete records to begin administering the estate and distributing assets.

Often the funeral director will notify the Social Security Administration of the decedent's death. If not, the estate administrator should do so. Entities paying pension benefits should be notified and asked if the benefits continue for a surviving spouse or children, or if there are any death benefits available.

#### **ADMINISTRATORS**

There are two types of administrators in Florida. "Trustees" manage trust assets. Probate estates are administered in Florida by a "Personal Representative", sometimes called an "Executor" in other states.

All administrators:

1. Are empowered to and should hire attorneys, accountants, appraisers, and other professional to assist them, and who are paid from the estate assets.
2. Are entitled to a fee for services rendered.
3. Owe a fiduciary duty to the beneficiaries and are personally liable if they breach that duty.

#### **TYPES OF ASSETS**

There are a few basic types of ownership of assets you should be aware of to expedite distribution. The steps to transfer ownership to the beneficiaries depends on the type of

ownership.

Solely Owned Assets (held in the decedent's name alone) are subject to probate estate administration.

Assets held in the Decedent's Trust are not subject to probate estate administration and can generally be distributed shortly after death.

Jointly Owned Assets (owned by the decedent and others with rights of survivorship) are owned by the survivors and can be distributed immediately after death with no probate estate administration.

Assets where a beneficiary is named, such as an insurance policy, annuity, or bank account with a "pay on death" provision can be distributed immediately after death with no probate estate administration.

## THE LAWYER'S ROLE

The lawyer you choose represents the Trustee or Personal Representative. He does not represent the beneficiaries. Your lawyer will assist you in review of any will or trust the decedent left and review the inventory of assets and creditors. He or she will advise you on the legal proceeding necessary to effectively transfer the decedent's assets to the beneficiaries. Your lawyer should inform you of the costs, fees and time expected to conclude the proceedings. Attorney fees are addressed in Florida statutes. You should be satisfied that the fee being charged is reasonable. Do not be afraid to ask questions.

When visiting the lawyer for the first time it is not necessary to have complete records or original documents, but they will be required. Bring whatever documents you have gathered to the initial conference. The lawyer will sort them out and advise you on a course of action.

It is important to provide full names and addresses of beneficiaries, administrators and others who the lawyer must contact.

## THE SETTLEMENT PROCESS

The surviving spouse or adult beneficiaries should be able to expeditiously settle the estate.

These are the most common types of administration:

1. TRUST ADMINISTRATION. Assets held in a Trust created during the decedent's lifetime:

Assets held in an inter vivos trust made by the decedent during his or her lifetime are administered under the terms of the trust. These assets are not subject to probate administration. However, trust administration is often as complicated as probate administration. The trustee must file a Notice of Trust with the probate court. Notice of acceptance of the trustee's position must be given to beneficiaries. The legal requirements should be handled by an attorney.

2. Probate Administration. Assets owned by the decedent in his or her name alone:

If the decedent owned any assets in his or her sole name at death those assets are subject to a probate administration.

If the decedent left no will the assets are distributed to the surviving beneficiaries under the laws of what is known as "intestacy". The surviving spouse, children, grandchildren, parents, siblings, etc. have priorities under law.

If the decedent left a will the terms of the will control administration and distribution of assets.

#### TYPES OF PROBATE ADMINISTRATION:

The type of administration necessary to transfer the decedent's assets the beneficiaries varies with the value of the estate and the necessity to appoint an administrator:

**FORMAL ADMINISTRATION:** If the estate is valued at greater than \$75,000.00, or if an administrator is needed to handle the assets a "formal administration" is necessary. In a formal probate administration an administrator, known as a "personal representative" in Florida is appointed. He or she gathers the assets, pays the bills, settles with creditors, sells or distributes assets as required, gives an accounting to the beneficiaries, and closes the estate. A formal administration consumes from five to eight months, depending on the situation in an estate which is not subject to federal estate tax. The filing of estate tax returns always delays final settlement.

**SUMMARY ADMINISTRATION:** In a Summary Administration for estates of less than \$75,000.00, or where the decedent has been dead for more than two years, the process is less complicated. An administrator is not appointed and the assets are distributed by court order directly to the beneficiaries. If the assets consist of real estate or other property which must be sold the beneficiaries must cooperate in the sale after administration. If they can not cooperate a formal administration should be conducted.

**FAMILY ADMINISTRATION:** This administration is available but rarely used because of its limited scope.

#### LIFE INSURANCE AND ANNUITIES

Life insurance policies and annuity contracts should be given to the beneficiaries. It is important that the primary estate administrator or trustee be fully aware of the amounts paid in each instance and to whom it is paid. This information must be reported on estate tax returns. The insurance and annuity proceeds are usually not subject to probate or trust administration because they are paid directly to the beneficiaries. Each company will require a certified copy of the death certificate.

#### ASSETS LOCATED OUT OF STATE

If the estate is being probated in Florida all personal property, wherever located, is subject to the Florida administration. Personal property includes everything but real estate. So if a bank account which is held in a bank in Ohio is owned by a Florida decedent the bank account must be probated in the Florida proceeding. But if the same decedent owns real estate in Ohio a separate proceeding must be held in Ohio to transfer title to the beneficiaries.

#### ACCOUNTING AND TAX RETURNS

The trust or state administrator is responsible to file both income tax and estate tax returns for the decedent and the estate. The beneficiaries are entitled to a detailed accounting of all assets and the actions of the administrator. To protect against criticism an administrator should keep

meticulous records and hire an experienced accountant early in the administration.

When a person dies his or her social security number is cancelled. A new tax identification number must be obtained if any tax returns will be filed. The attorney or accountant can obtain the new number.

Even though a person is deceased an income tax return must be filed for their year of death. If they are married a joint return can be filed.

An estate tax return may be required as well. The estate for federal estate tax purposes includes all personal and real property a person held an interest in, including jointly owned property and other property which do not require probate or trust administration, such as life insurance proceeds, and retirement accounts.

Because a person's social security number is void at death a tax identification number must be obtained if a probate estate or trust is administered.

An accountant should be retained early in the process to plan to file the necessary returns.

## CREDITORS

Creditors of the decedent are entitled to be paid from both probate and trust assets. But there are many circumstances where creditors claims can be avoided. If the probate or trust estates consist of only Exempt assets and Homestead of the decedent the creditors need not be paid.

"Exempt" assets as well as the decedent's "homestead" can not be reached by creditors if those assets go to appropriate persons, usually the surviving spouse or children of the decedent.

Exempt property included household furnishings to a value of \$10,000.00, automobiles used by the decedent and immediate family members, Florida Prepaid College Savings agreements, and certain death benefits for teachers and school administrators.

"Homestead" is the decedent's residence at death which was titled in their name. Homestead can include real estate, or a mobile home on rented land.

## SURVIVING SPOUSE'S RIGHTS

A surviving spouse of a Florida decedent is entitled to special rights not available to others:

1. The right to an "Elective Share" equal to thirty percent of the decedent's assets.
2. The Homestead Exemption from creditors and the right to a life estate in the decedent's homestead if not owned jointly with the surviving spouse.
3. Right to Exempt Property discussed above.
4. Family Allowance.
5. Preference in being appointed Personal Representative.

## SAFE DEPOSIT BOXES

If the decedent owned a Safe Deposit Box access is limited to those the decedent granted access to during his or her life and others allowed by law to retrieve certain documents and by court order. Locating any safe deposit box is important. Very often the most important documents are stored in a safe deposit box.

## MILITARY PAPERS

Copies of military discharge papers should be obtained. If an individual who served in the armed forces dies, the Veterans Administration will provide a headstone marker, and an American flag, if desired.

In the process of making funeral arrangements, you will need to take the military separation papers to the funeral home. These papers are needed to show proof that the deceased person was a veteran of military service.