

Elder Law Guys: What to do (and not to do) when someone dies

The death of a loved one brings with it many emotions and decisions. Most families prioritize the funeral process and then grieving begins.

But the end of a life brings many legal implications. As lawyers, we have guided many families through this process, which normally begins with receiving notification of the client's death. Over the years, we have noticed that some people are what we might term "self-starters."

So, to those people who just can't wait to get started, here are some things to consider before you do anything. This is not an article meant to explain the probate process and most people are aware that there are taxes to be paid and court documents to be filed. Rather, here's a checklist of some common-sense action (or non-action) steps:

Call your lawyer — Your lawyer (even if not the one who wrote the will) can give you a thumbnail sketch of some of the issues to be encountered and answer some initial questions to put your mind at ease. Most importantly, your lawyer can advise you to avoid making mistakes like the next items.

Don't close the decedent's bank account — There is no requirement that a deceased person's bank account be closed immediately following death. This is especially important if the account is jointly owned with another person. There may be some post death adjustment of a Social Security deposit, or some other transaction (or simply access to the funds) that may be necessary, but it could be forfeited if the account is closed too soon.

Don't enter a bank safe deposit box — In Pennsylvania, if a safe deposit box is owned solely by the decedent, the personal representative of the decedent's estate must notify the Pennsylvania Department of Revenue of the existence of the safe deposit box and make an appointment to open the box and inventory its contents in the presence of a revenue officer for determining possible Inheritance Tax liability.

Don't access the IRA — The decedent's Individual Retirement Account (IRA) is a tax-deferred investment that has strict rules applicable to the decedent and the beneficiaries of the IRA. These rules are enforced by the Internal Revenue Service and provide for generous time allotments to make decisions about accessing the retirement account and transferring it to the intended beneficiaries. There are numerous post-mortem tax planning options for IRAs but those options disappear if you simply transfer the account to the named beneficiaries immediately after death.

Don't immediately probate the Will — Yes, you heard that correctly. While it is common that the will is probated, there are certain situations where it may be unnecessary or even disadvantageous to probate. For example, all of the decedent's assets may be jointly owned or have named beneficiaries that do not need the appointment of an executor under the will to pass title to the heir.

Even worse, sometimes the decedent's estate assets are less than the outstanding debts owed, becoming what is known as an insolvent estate.

In that situation, even if the executor happens to be the sole heir of the estate under the will, he/she may end up with nothing after paying off all of the creditors and in essence, takes on the role as bill collector for all of the decedent's creditors with very little compensation for her/his efforts.

So, it's better to ascertain the net value of the decedent's estate before stepping forward to be appointed as the executor. Furthermore, just because you are named as the executor under the will does not mean you have to serve. You can simply choose not to serve (known as a renunciation) and the court will move on to an alternate personal representative.

While there are many common aspects of handling a decedent's estate, all situations, like individuals, are different and after the dust settles and the family is ready to assemble with the attorney, a thorough review of the decedent's affairs can begin.

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