Estate

What is Estate Administration?

When an individual dies, certain assets of the decedent (non-probate) may be transferred by contract, such as joint and survivorship property or payable on death accounts. Other assets (probate) may be transferred through proceedings in Probate Court. Most persons die owning both probate and nonprobate assets, all of which generally require some type of documentation to complete the transfer.
There are advantages and disadvantages in using non-probate or probate proceedings. It is prudent to consult an attorney to determine the best manner in which to hold one's assets.

It is the Probate Court's responsibility to ensure the probate assets are collected, maintained, and distributed among the decedent's heirs, beneficiaries, and/or creditors according to the direction of the decedent as expressed through a will and if there is no will, through the laws of Ohio. This process is known as the administration of a decedent's estate.

How Soon Should the Estate be Opened?

There is no statutory time limit for opening an estate after the death of the decedent. The estate should be opened within a reasonable time and as soon as practicable, especially where there are debts to be paid. If an estate is not timely opened, any interested person, which includes creditors of the estate, may apply to be appointed to administer the estate.

Who Administers the Estate?

Once the Probate Court is notified of the decedent's death, and receives the proper documents, the Probate Court appoints and issues Letters of Authority to a suitable and qualified fiduciary. The fiduciary is appointed according to the decedent's Will, or if there is no Will, by statutory guidelines. A bond may be required of the fiduciary to protect the beneficiaries and creditors of the estate and to ensure proper administration.

If the decedent died with a Will the fiduciary is called the Executor and if the decedent died without a Will, the fiduciary is called the Administrator. A fiduciary, even though named in the Will, has no authority to administer the estate, until the Probate Court makes the appointment and issues the Letters of Authority.

Once appointed by the Probate Court, it becomes the responsibility of the fiduciary to administer the decedent's estate and to account to the Probate Court for the administration. A fiduciary who fails to perform his or her duties is subject to removal by the Probate Court.

What are the Duties of the Fiduciary?

The fiduciary, whether an Executor or an Administrator, may be an individual or a bank having trust powers. The fiduciary's duties are:

1. To determine the names, ages, and degree of relationship of heirs;
2. To take possession of, and conserve all of the real and personal property of the decedent;
3. To have all property appraised where the value is not readily ascertainable;
4. To file with the Probate Court, within three months of the appointment, an Inventory of all the assets held in the name of the decedent;
5. To receive and determine the validity of all claims against the decedent's estate;
6. To timely file all tax returns and to pay income and estate taxes, if any;
7. To make distribution of the estate's assets to the proper beneficiaries, and

8. To file an account with the Probate Court of all receipts and disbursements made by the fiduciary

Does a Fiduciary Need an Attorney?
Due to the complexity of the law and the legal process that is involved in estate administration, the Probate Court strongly recommends that all fiduciaries seek legal counsel. Good legal advice and guidance can expedite the probate process, prevent costly errors, and ensure that the fiduciary is not cited by the Probate Court for the failure to properly perform his or her duties, or sued by beneficiaries for malfeasance.

Who Can Practice Law in the Probate Court?
Legal practice in the Probate Court is restricted by law to attorneys who are licensed by the Supreme Court of Ohio. If an individual wishes to handle his or her own case, that person may do so, however, such person may not represent others. Due to the complexity of the law and the desire to avoid costly errors, most individuals who have matters before the Court are represented by an attorney. Deputy Clerks are prohibited by statute from practicing law which includes giving legal advice, instructions on which forms are required or how to fill out forms.

For more information on this please visit: https://codes.ohio.gov/ohio-revised-code/section-4705.07

How Long Should It Take to Administrate an Estate?
The majority of estates should be finalized within 6 months of the date of the appointment of the fiduciary. However, where there are family, creditor or tax disputes or other similar litigation, the estate administration may take longer to conclude.

What are the Steps in a Full Administration?
All estates are not alike, and can differ for a number of reasons. An estate may be Testate (with a Will) or Intestate (without a Will). The nature, and ownership of assets can vary and so too does the procedure for transferring those assets. Next of kin vary and so do very important notice requirements. Sometimes the fiduciary must address issues of spousal rights or even issues of insolvency where the estate's debts exceed the estate's assets.

Because of these differences each estate is treated differently. As a general matter, the basic steps of administering an estate pursuant to Ohio law is as follows:

- Application for authority to admit the Will to probate, if one exists, and for authority to administer the estate;
- Appointment of a fiduciary;
- Gathering assets and obtaining appraisals as required;
- Filing an Inventory in a timely manner;
- Determining debts, the sufficiency of assets and the payment of creditors;
- Timely filing of income tax returns, the Ohio Estate Tax return and the payment of taxes, if any;
- Distribution of assets to beneficiaries;
- Closing the estate by timely filing a final account or certificate of termination.

What Property Must be Appraised?
Property must be appraised if the value is not readily ascertainable. Examples of such property would be real estate, motor vehicles, household furniture, closely held corporations, and partnerships. The appraiser must be suitable, qualified and disinterested.

What if There is no Will?
If the decedent had no Will, the estate is generally administered in a similar manner as if a Will had been probated. In completing the estate administration, the decedent's property is distributed according to the Statute of Descent and Distribution. If the next of kin are unknown, the filing of a civil action to determine heirship may be required.

Must a Will be Presented to the Court?
A Will should be presented to the Probate Court as soon as practical after the death of the decedent, even if there are no known probate assets. A person who withholds a Will intentionally, negligently, or without reasonable cause may lose their right to inherit. An action may be filed to require the production of the Will any time after the death of the decedent, and failure to produce a Will upon Court Order may result in a fine and/or incarceration through contempt proceedings.

What is a Release from Administration?
For dates of death on or after March 18, 1999, If the decedent's creditors will not be prejudiced and the probate estate consists of property of a gross value of $35,000, or less, the estate may be released from administration. When the surviving spouse is the sole beneficiary, and the probate estate consists of property of a gross value of $100,000, or less, the estate may be released from administration.
A release from administration is less complicated and may be completed more quickly than a full administration. If the estate asset is real property, however, you should consult with an attorney to avoid any costly errors.

What is a Summary Release from Administration?
For decedents dying on or after August 28, 2000, there is an estate administration procedure called a "Summary Release from Administration".

This procedure is available if the estate assets do not exceed $45,000, and the applicant is the decedent's surviving spouse, who has paid the funeral bill or is obligated to do so, and who is also entitled to the entire allowance for support.

This procedure is also available where the applicant is not the surviving spouse, has paid or is obligated in writing to pay the decedent's funeral and burial expenses, and the value of the estate assets is the lesser of: $5,000 or the amount of the decedent's funeral and burial expenses.