



# A Clear Direction



Lighting The Pathway  
Of Probate And  
Estate Administration

## **Items To Locate:**

As soon as possible after your loved one's death, these items should be located and given to the person responsible for seeing to the deceased's final affairs:

- Directives regarding funeral arrangements
- Prepaid funeral or burial contracts and related documents
- Original last will and testament
- Trust agreements (if any)
- Premarital agreement (if any)
- Bank statements and account information
- Keys to any safe-deposit boxes
- Statements for retirement and brokerage accounts
- Automobile, trailer and other vehicle titles
- Tax returns and tax documents (including 1099 and W-2 forms)
- Birth and marriage certificates
- Military discharge documents
- Stock certificates and savings bonds
- Social Security card
- Copies of bills owed by the deceased
- Deeds and tax information for real estate

The information you obtain from this brochure is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters and emails. Contacting us does not create an attorney-client relationship until a valid attorney-client contract is signed. Please do not send any confidential information to us until such time as an attorney-client relationship has been established.

Estate administration after a person's death involves:

- Gathering the assets of the estate
- Paying debts
- Distributing remaining assets

The McIntosh Law Firm can assist in every aspect of estate administration. Contact us at (704) 892-1699.

## **What Assets Are Owned By The Deceased?**

There are several types of assets in which the deceased may have owned an interest:

- Solely owned assets
- Jointly owned assets
- Assets held in trust
- Business interests
- Life insurance proceeds
- Retirement accounts
- Open contracts

## **Non-Probate Assets**

If the deceased designated a beneficiary to receive an asset upon the deceased's death, it is known as a non-probate asset and may not require any type of estate administration or court filings. These assets pay directly to the named beneficiary and are not transferred under the deceased's will. They include:

- IRAs
- 401(k) plans
- Life insurance policies
- Annuities

Bank accounts owned jointly with rights of survivorship do not require estate administration (as long as there is a surviving co-owner). If the deceased owned an interest in a business, the governing documents of the business may provide for the transfer of the deceased's interest without court involvement. In addition, any assets held by the deceased in a trust will likely avoid probate court involvement.

### **Avoidance of Probate in Small Estates**

In cases where the personal property owned solely in the name of the deceased does not exceed a certain value (currently \$20,000), the family can avoid probate procedures by using one of the procedures below:

- Spousal and Children's Allowances
- Affidavit for Collection
- Summary Administration

You may need an attorney's help to guide you through these processes.

### **Spousal and Children's Allowances**

Under North Carolina law, the surviving spouse currently is entitled to receive an allowance of \$30,000 for his or her support after the deceased's death. This allowance is payable out of the deceased's personal property (not real estate). In addition, children under 18, under 22 and enrolled in college full time, or under 21 and disabled are entitled to receive an allowance of \$5,000 each.

## **Affidavit for Collection**

If the net value of the deceased's personal property does not exceed \$20,000, the family may transfer that property (often a motor vehicle or bank account) by filing an Affidavit for Collection with the probate court. This procedure eliminates many steps required in a formal estate administration and may be used even if the deceased owns real estate. However, it is recommended that an attorney be consulted in such a case.

## **Summary Administration**

When the deceased leaves a surviving spouse as the sole beneficiary, the surviving spouse may file a petition for Summary Administration. This procedure can be used regardless of the value of the deceased's assets as long as the spouse is the only heir or beneficiary. The spouse must assume personal liability for all liabilities of the deceased that were not discharged by reason of death and liability for all taxes and valid claims against the deceased, to the extent of the value of the property received by the spouse.

## **Formal Estate Administration**

In cases where assets owned solely in the name of the deceased do not qualify for one of the previous procedures, a formal proceeding with the probate court to supervise the appropriate transfer of the deceased's assets is necessary. An attorney experienced in estate administration can make this process efficient and cost-effective.



## Reasons to Consult an Attorney

- If it is unclear who should receive the deceased's assets
- If there is conflict among the heirs and/or beneficiaries
- If the total value of all of the deceased's assets (including both probate and non-probate assets) exceeds the amount subject to federal estate taxes (currently \$5,000,000)
- If there is real estate or a business involved



Attorney Amy Shue Isaacs has over 13 years of experience with probate and estate administration. To learn more or schedule an appointment with Amy, contact her at (704) 892-1699 or [Amy@McIntoshLawFirm.com](mailto:Amy@McIntoshLawFirm.com).



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